

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1503

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA

Plaintiff-Appellee

vs.

GLENN BANKS

Defendant-Appellant

Appeal from the United States District Court For The
Western District of New York

APPENDIX FOR
DEFENDANT-APPELLANT

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1 of that nature.

2 Q Now, when you say you had money for informants, do
3 you know what the arrangement was with the informants?

4 A The Sheriffs Office had confidential informants and
5 if the information which they supplied turned out to
6 be of value they were to be paid, there were no fixed
7 or flat rate but a reasonable amount of money for
8 their efforts during the time they had spent, and so
9 on.

10 Q Do you know if there were actually any informants
11 used?

12 A Yes, sir.

13 Q Do you know their names, please?

14 A A Robert Gray, G-R-A-Y, and a James Riley, were the
15 two informants that were used.

16 Q Now, when you were here working in the investigation
17 did you meet those fellows?

18 A Yes, sir.

19 Q And were you ever part of investigations when they
20 were there and present?

21 A Yes, sir.

22 Q Do you know if they were actually paid, sir, from the
23 money you brought?

24 A Yes, sir, I do.

25 Q Do you know how much each of them got?

2.

1 A James Riley received thirteen hundred dollars, Robert
2 Gray received seven hundred dollars, there was an
3 additional one hundred dollars that I provided to
4 Captain Costantino of the Sheriffs Office with the
5 understanding that this was also to be paid to Robert
6 Gray.

7 Q Now, when the money went to the informant did it go
8 from you to them directly?

9 A No, sir.

10 Q How was it paid to them, if you know, sir?

11 A Well, they were confidential informants who worked
12 for the Sheriffs Office Detectives and I dealt with
13 them through the intermediary or through the Detectives,
14 my dealings were with the Detectives and the Detectives,
15 of course, dealt directly with the informants.

16 Q Were you present, sir, when Mr. Gray received any
17 money?

18 A Yes, sir, I was.

19 Q And describe how that happened?

20 A I had originally given the money to Captain Costantino,
21 the Sheriffs Office, he was at that time Sargent,
22 obtained a receipt from him stating that the purpose
23 was for payment of confidential informants. When at
24 the conclusion of the investigations the money was
25 paid to them, it was done in my presence in the Sheriffs

3

1 Office, the Sheriffs Office then took their own
2 receipts from the informants. There was, well,
3 Captain Costantino was present, Detective Petronella
4 was present, Captain Schatia, Peter Schatia, was
5 present at the time.

6 Q Now, Mr. Shortall, I would like you to tell the
7 Jury about when with respect to the investigation
8 the payments to the informants were made?

9 A The bulk of it was paid at the conclusion of the
10 investigation. This was - I believe it was March
11 12th. I don't think it was done the night of the
12 11th, I think it was done the next day, as I recall.

13 Q Now, the payments to Mr. Riley, would you describe
14 how that was made, if you know, sir?

15 A It was paid to him in cash. Now, there was - there
16 was money, there was two hundred dollars that I
17 advanced during the course of the investigation that
18 I was not a witness to the transaction that occurred
19 there. I just turned that over to the Sargent who
20 was in charge of the squad in the Sheriffs Office
21 with whom I was working on the investigation.

22 Q Did you ever see Mr. Riley get any money?

23 A Yes, sir.

24 Q And when was that, that was also on the 12th?

25 A This was after the conclusion of the investigation.

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4.

(Jury present.)

1
2
3 W I L L I A M K. S H O R T A L L (37 Harvest Road,
4 Levittown, Pennsylvania), a Witness called by and in
5 behalf of the Government, having been previously duly
6 sworn, resumed the witness stand and testified further
7 as follows:

8
9 THE COURT: Are you ready, Mr. Hill?

10 MR. HILL: Yes, your Honor.

11
12 CROSS EXAMINATION

13 BY MR. HILL:

14 Q Mr. Shortall, --

15 A Yes.

16 Q -- you were detailed specifically by the United
17 States Department of Agriculture to conduct this
18 investigation, is that correct?

19 A Yes, sir.

20 Q And that was as the result of some reports that the
21 Department had received about food stamp abuses, is
22 that right?

23 A Yes, sir.

24 Q And was one of the abuses that the Department received
25 reports about that there was a black market of some

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1 sort going on in food stamps in the Buffalo area?

2 A Yes, sir.

3 Q Did you get any details about that black market?

4 A The initial reports were that there was widespread
5 trafficking in food stamps, that is outside of the
6 normal legal channels, and, of course, I really had
7 no details until I arrived here.

8 Q All right.

9 A That's one reason I was sent here.

10 Q Now, did those reports come through the newspapers?

11 A My instructions were received from my Regional Director
12 who advised that the United States Attorney here
13 requested assistance and he did say that there was
14 considerable publicity in all the news media.

15 Q All right. And as a result of that and whatever else
16 or whatever other information you might have received
17 you came to the Buffalo area?

18 A Yes, sir.

19 Q All right. When you came up here initially you brought
20 seven hundred and seventy-five dollars worth of food
21 stamps with you?

22 A Yes, sir.

23 Q And what was your purpose in bringing those?

24 A This was more or less or normal issuance that an agent
25 is given when there's a possibility of working on the

6.

1 Food Stamp Program and these were for whatever purposes
2 might be indicated. The magnitude of the problem
3 appeared to be much higher after I arrived.

4 Q When you say for whatever purposes might be indicated
5 can you be a little more specific as to those purposes?

6 A We, as a regular practice, use food stamps in
7 checking to see if there's illegal activity, violations
8 of the program, this would be such things as selling
9 ineligible items for food stamps or discounting
10 transactions where people are buying food stamps at
11 less than their face value for cash, things of that
12 nature.

13 Q Now, ordinarily when you conduct these investigations
14 do you use local police agencies or do you generally
15 do it with your own men and facility?

16 A The majority of time we do it by ourselves.

17 Q In this particular case though the Erie County
18 Sheriffs Department was employed, is that correct?

19 A Yes, sir.

20 Q Can you tell the Jury why the Sheriff of Erie County
21 got involved in this Federal investigation?

22 A Because the Sheriffs' Office advised that they had
23 confidential informants who could provide information
24 on this. The Food Stamp Program, of course, is
25 administered by the States and through the counties

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1 which are a subdivision of the State, it's part
2 Federal and part State program.

3 Q Now, when you turned up with this seven hundred and
4 seventy-five dollars in food stamps who decided that
5 more would be necessary?

6 A Well, I did after consultation, telephone consultation
7 with my superiors in New York City.

8 Q All right. Well, did you base your decision on
9 something that you had learned locally?

10 A Yes, sir.

11 Q And did you learn that from the Erie County Sheriffs
12 Department?

13 A Through the Erie County Sheriffs Department and through
14 various other people with whom I spoke, the local
15 officials of the Food and Nutrition Service and through
16 the United States Attorney's Office.

17 Q All right. Now, the first increment to your supply
18 of food stamps was for ten thousand two hundred and
19 fifty dollars, those were the ones you got through
20 the M&T, correct?

21 A Yes, sir.

22 Q And who suggested getting that amount?

23 A I did.

24 Q Is that based on consultation with the Sheriffs
25 Department?

1 A No. It was based on consultation with the Food and
2 Nutrition Service officials here.

3 Q All right.

4 A Actually the figure of ten thousand two hundred and
5 fifty dollars just was more or less an arbitrary
6 figure, that happened to be the value of one box.

7 Q In other words, these things come in little cases,
8 do they?

9 A They come in boxes, it almost looks like a shoebox.

10 Q Do you know if the Food and Nutrition people had been
11 in contact with the Sheriffs Department at that point?

12 A No, sir, I do not.

13 Q Now, then the next increment took place when another
14 agent came up from New York and brought a thousand
15 dollars worth with him?

16 A Yes, sir.

17 Q Now, was that based on some consultation with you?

18 A This was after I had been conducting telephone
19 conversations with my superiors in New York City and
20 they advised that this other agent would be in the
21 area and he would bring me a thousand dollars worth
22 of stamps.

23 Q Okay. And then finally you got fifty-three thousand
24 dollars worth from New York City?

25 A Yes, sir.

1 Q What was the decision to bring that amount up here
2 based on?

3 A This happened to be all that we had available in
4 New York City at the time and they - that is in our
5 particular office, and this was - there was nothing
6 magical about that particular number, it's just that
7 we - it appeared that we were going to need considerably
8 more, the investigation was becoming more widespread.

9 Q And this is when the Sheriffs Department was deeply
10 involved, is that right?

11 A Yes, sir.

12 Q And were they involved in this decision to get a lot
13 of food stamps up here?

14 A Yes, sir. They advised they needed more and I felt
15 this way and the U.S. Attorneys also felt this way.

16 Q All right. Was one of the people from the Sheriffs
17 Department that you were consulted with Joseph
18 Petronella?

19 A Yes, sir.

20 Q Did Joseph Petronella feel that he would need a lot
21 more food stamps?

22 A Yes, sir.

23 Q These food stamps, and let me stay on them for a bit
24 more here, before food stamps are issued on the, you
25 know, through normal channels, so to speak, I assume

1 A Bank.

2 Q -- and then from there they are distributed to the
3 public?

4 A Yes, sir.

5 Q Before they are released to that distribution agency
6 or distribution point must some sort of a validation be
7 made on the stamp or must some sort of order be given
8 to release them?

9 A Well, you're getting into administrative controls
10 and all which I have no direct knowledge of but, as
11 I say, I know that it is kept under very tight
12 security, very tight control at the American Bank
13 Note Company. It's an operation similar to what the
14 mint would be. They are printed much like currency
15 and, of course, they are obligations of the United
16 States,

17 THE COURT: The basic answer is you don't know
18 the answer to the question he asked.

19 THE WITNESS: Yes, sir.

20 BY MR. HILL:

21 Q These fifty-three thousand dollars in food stamps
22 were released from New York City, do you know from
23 where in New York City?

24 A They came from my Regional Office at 26 Federal
25 Plaza, my then Regional Office.

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//

1 Q Well, is that Regional Office a point from which
2 food stamps are normally released to the public?

3 A No, sir. They are obtained from the Food and
4 Nutrition Service for our purposes.

5 Q Can food stamps be used for anything other than food?

6 A No, sir.

7 Q Ordinarily at some point along the line food stamps
8 get converted into cash, is that correct?

9 A In affect, they are converted into cash. They are
10 treated as an immediate cash deposit by the bank which
11 receives the deposit.

12 Q And the bank would receive them from whom?

13 A From either an authorized retailer or an authorized
14 wholesaler who deposits them in a bank and then they're
15 sent to the Federal Reserve Bank and the bank receives
16 credit for that much cash.

17 Q So it would only be one of these authorized persons
18 who could take a quantity of food stamps and convert
19 them into cash at a bank, is that right?

20 A Yes, sir.

21 Q Now, to anyone other than one of these authorized
22 persons then food stamps are useless except for
23 purchasing food, is that right?

24 A Yes, sir.

25 Q Now, as far as issuing these stamps goes or transferring

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A.

1 name at the moment.

2 Q It was someone other than the Sheriffs Department,
3 is that right?

4 A Yes, sir.

5 Q Do you know if any of the tapes in any of the other
6 transactions involving Mr. Banks were also copied
7 from the originals?

8 A No, sir.

9 Q You don't know that?

10 A No.

11 Q In connection with your activities in the Buffalo
12 area in connection with this investigation, how much
13 time did you spend here?

14 A Several weeks. That's during the course of the
15 investigations.

16 Q And during that period how many transactions did you
17 observe?

18 A In toto? I mean you don't mean just concerning Mr.
19 Banks?

20 Q Yes, in toto.

21 A I can't give you an exact answer. It was in the
22 neighborhood of thirty.

23 Q All right. Over a period of how many days?

24 A I believe it took - as I recall, it took sixteen days
25 from the time we first started until the arrests were
made.

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1 Q Did you observe any situations in which sales were
2 not completed?

3 A Yes.

4 Q How many of those?

5 A In connection with Mr. Banks the undercover detective
6 went there on February the 26th and there was no
7 transaction made on that day.

8 Q All right. How many other transactions did you observe
9 where sales were not completed?

10 A Not concerning Mr. Banks, not involving Mr. Banks?

11 Q Overall.

12 A I can only give you a guess. Roughly a half a dozen.

13 Q Another half a dozen besides the thirty?

14 A Yes. Possibly. I'm not certain.

15 Q Do you remember at what time of the day the February 25th
16 transaction took place?

17 A Not specifically . It was in the late afternoon,
18 early evening.

19 Q Was it dark out at the time?

20 A Pardon?

21 Q Was it dark out at the time?

22 A No, sir.

23 Q At that time you were seated in a car I believe you
24 said, how far --

25 A Yes.

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1 what was being said?

2 A Not in the car that I was in on the 28th. That was
3 in another vehicle.

4 Q Okay. Could you hear what was said between Mr. Banks
5 and Mr. Petronella before Mr. Banks came out of the
6 store?

7 THE COURT: You are talking about Mr. Shortall
8 personally?

9 MR. HILL: Yes.

10 BY MR. HILL:

11 A As I recall, I could hear at least part of what was
12 going on.

13 Q Well, Mr. Petronella had to kind of talk Mr. Banks
14 into coming outside, didn't he?

15 A Yes, sir.

16 Q And that was part of the plan that was then in opera-
17 tion between yourself and the Sheriffs Department,
18 and so on, isn't that right?

19 A Yes, sir.

20 Q And the reason for getting Mr. Banks to come outside
21 rather than having the transaction take place inside
22 was so that you could take pictures of it?

23 A Yes, sir.

24 Q All right. Now, you were also present at the last
25 transaction on March 11th, is that right?

1 A. Yes, sir.

2 Q -- Regional Director, and it says approved?

3 A. Yes, sir.

4 Q What does his approval have to do with this report,
5 why is it necessary, what function does it play?

6 A. Well, the report is issued from Mr. Lonnigan's
7 region, he's the boss, the Director of that region,
8 and when it goes out to the people on distribution
9 lists he signs it, he signs any correspondence that
10 goes out of the office.

11 Q Well, was it important that Mr. Lonnigan be informed
12 in this report of the involvement of Mr. Gray and
13 Mr. Riley?

14 A. No. They are confidential informants. This
15 information is supplied to him outside of that report.
16 Their names at that time were kept in secret, kept
17 in confidence.

18 Q Well, you don't even mention in here that you used
19 confidential informants, do you, without mentioning
20 names?

21 A. No, sir, I don't.

22 Q And, as a matter of fact, didn't Mr. Gray and Mr.
23 Riley actually have face to face dealings with some
24 of the people that food stamps were sold to?

25 A. Yes, sir.

1 Q So they were doing more than supplying information
2 to the Sheriff, right?

3 A Yes, sir.

4 Q They were out there helping to set up these sales,
5 weren't they?

6 A Making introductions, yes.

7 Q Were any tape recordings made of these introductions,
8 as you have called them, or any other conversations
9 between purchasers and Mr. Gray or Mr. Riley?

10 A If it were incident to the actual transaction being
11 made I believe Mr. Gray's voice is on one of the
12 transactions here.

13 Q All right. But weren't there some conversations
14 involving one or both of those men and people including
15 Mr. Banks who bought stamps that were not recorded?

16 A Yes, sir.

17 Q Now, I notice also in your report of investigations
18 here, Defendant Exhibit 1, relating to the February
19 28th transaction, -- Just give me a moment to orientate
20 myself here, if you would. If you would look at your
21 report of the February 28th transaction you indicate
22 that that transaction was preceded by some sort of a
23 telephone conversation involving Mr. Banks, and was
24 it Deputy Petronella the other party to that telephone
25 conversation?

- 1 A Yes, sir.
- 2 Q Was that telephone conversation recorded?
- 3 A No, sir, it was not.
- 4 Q All right. And if you would refer to your report
- 5 in connection with the March 7th transaction, was that
- 6 not also preceded by a telephone conversation between
- 7 Mr. Banks and Deputy Petronella?
- 8 A Yes, sir.
- 9 Q Was that conversation recorded?
- 10 A No, sir.
- 11 Q Now, when you came up to Buffalo I believe you
- 12 testified that in addition to bringing seven hundred
- 13 and seventy-five dollars in food stamps you brought
- 14 some money to pay these confidential informants, as
- 15 you called them?
- 16 A I don't believe I did, but I did have some money with
- 17 me when I came, when I first came.
- 18 Q How much did you have with you when you first came?
- 19 A I don't recall exactly. I think it was two hundred
- 20 or two hundred and fifty dollars.
- 21 Q And when did you arrive in Buffalo, what date?
- 22 A February 23rd.
- 23 Q After you had been here then you got some more money
- 24 for --
- 25 A Yes, sir.

1 Q -- confidential informants?

2 A Yes, sir.

3 Q How much?

4 A In total I eventually had six thousand dollars.

5 Q In total.

6 A Yes, sir.

7 Q And where did that six thousand dollars come from?

8 A It came from funds that we have available to us for
9 investigative purposes.

10 Q We being --

11 A It came from our Regional Director. They have a
12 certain amount of funds available for use in investi-
13 gation in the office and then through administrative
14 procedures, which I'm not really familiar with, they
15 can obtain more for - I think from the Treasury
16 Department.

17 Q What made you settle on the figure of two hundred
18 dollars as the original amount you brought?

19 THE COURT: Or two hundred and fifty.

20 BY MR. HILL:

21 Q Or two hundred and fifty?

22 A That's just what they gave me, what they had immediately
23 available.

24 Q Okay. Well, how long were you here before you received
25 the additional five thousand eight hundred or five

1 seven hundred and fifty?

2 A Let's see. I think Agent Allen brought another
3 fifty dollars, then Assistant Regional Director
4 Hendricks brought up an additional sum of money.

5 Q How much?

6 A I think it was -- I don't recall exactly. I think
7 it was five hundred dollars. Then the bulk of the
8 amount was later sent up here by check and that would
9 have been five thousand dollars I believe was sent by
10 check through Mr. Cobbe who was then the head of the
11 Food Stamp Office and by me deposited in a bank
12 account here in Buffalo, an escrow account.

13 Q Upon what was the decision to bring up the rest of
14 that informant's money based?

15 A It was an executive decision or policy decision made
16 by the Regional Director and the Assistant Directors
17 down in Washington, our headquarters, that we should
18 have this money available for whatever eventuality
19 that there might be.

20 Q Well, did the Erie County Sheriffs Department have
21 some input with respect to that decision?

22 A Yes, sir.

23 Q They said they would need a lot of money to pay these
24 people off?

25 A They said initially that it would be money to pay

1 informants fees.

2 Q Did Deputy Petronella say that?

3 A My feelings on those lines were with Sargent
4 Costantino who was Deputy Petronella's boss, superior.

5 Q All right. And they are both connected with the Erie
6 County Sheriffs Department Narcotics Squad, is that
7 right?

8 A Yes, sir.

9 Q Now, you mentioned that you paid out something like
10 two thousand dollars, what happened to the other four
11 thousand?

12 A I sent it back.

13 Q You testified that these informants were going to be
14 paid if their information was of value, is that right?

15 A Yes, sir.

16 Q And by being of value don't you mean if it resulted
17 in actual arrests?

18 A Basically, yes.

19 Q And is it correct that the more valuable that an
20 informant's information was the more the informant
21 would be paid?

22 A Yes, in affect.

23 Q In other words, the more successful he was at supplying
24 information or leads that would result in arrests the
25 more money he would make?

1 A And the more time and the more effort expended and
2 the greater number of cases would be - the reimbursement
3 would be commensurably higher.

4 Q All right. When did Jimmy Riley get hired?

5 A Well, the first day would have been on February the
6 24th.

7 Q All right. And how long did he work?

8 A Right through until March the 11th.

9 Q All right. And when did Robert Gray get hired?

10 A The same time as Riley.

11 Q And how long did Robert Gray work?

12 A Again, right on through till March 11th.

13 Q All right. And is it correct that the police people
14 involved and the investigators, yourself, Deputy
15 Petronella, Deputy Costantino, whoever else might
16 have been involved would get together in the morning
17 somewhere and talk over the day's activities?

18 A Yes, sir.

19 Q And where would you meet?

20 A I generally met Sargent Costantino and other deputies
21 at the Erie County Sheriffs Office on West Eagle
22 Street.

23 Q Somewhere along the line you would get together with
24 Riley and Gray, is that right?

25 A Yes, sir.

- 1 Q And where would they meet you?
- 2 A They would meet us at a restaurant on Connecticut
- 3 Street.
- 4 Q One particular restaurant?
- 5 A Yes, sir.
- 6 Q Which one?
- 7 A It's called the Armory Tavern.
- 8 Q And what time of the morning would you meet there?
- 9 A We would meet usually around lunch time, around noon
- 10 time.
- 11 Q And have lunch together?
- 12 A Most of the time.
- 13 Q Who paid for lunch for Gray and Riley?
- 14 A They paid for their own.
- 15 Q Did they?
- 16 A So far as I know. I didn't pay for them.
- 17 Q Did Deputy Petronella buy for them?
- 18 A He may have. I don't know.
- 19 Q Did they have a couple of drinks or beers with lunch?
- 20 A I couldn't say. I don't -- They may have.
- 21 Q Then from the Armory Tavern what would you do, go out
- 22 on the streets with respect to the cases you were
- 23 investigating that day?
- 24 A Yes, sir.
- 25 Q All right. And was there any particular time that you

1 knocked off for the day?

2 A. No, sir, no particular time. We would go into the
3 night time. It depends on what leads that we might
4 have, how things developed.

5 Q How much was Riley paid again?

6 A. Riley was paid thirteen hundred dollars.

7 Q And how much was Gray paid?

8 A. Eight hundred dollars.

9 Q All right. How many arrests did Riley get for you?

10 A. Well, you mean how many people had he established
11 contacts with that resulted in arrests? I never
12 have added up along those lines.

13 Q How many did Gray get for you?

14 A. I've never determined that either.

15 Q Did Riley get more than Gray?

16 A. He spent more time with us.

17 Q How much more?

18 A. I didn't keep a time card on him or anything like
19 that, counselor, but it was a substantial sampling
20 more of time than Gray did.

21 Q Was one of the reasons that Riley was given money
22 because he had lost his job at Freezer Queen Foods?

23 A. I have no knowledge of that.

24 Q All right. He was given his thirteen hundred dollars
25 in a lump sum at the end of the investigation, is that

1 right?

2 A That's my recollection, yes.

3 Q Was he given that money so he could leave the City?

4 A Not that I know of.

5 Q Did Deputy Petronella ever say anything about that to
6 you?

7 A I think he might have said that Riley might have
8 to leave town, yes.

9 Q By the way, was this money or any part of it actually
10 paid to either Mr. Riley or Mr. Gray in your presence?

11 A Yes, sir.

12 Q All of it?

13 A All but the one hundred dollars.

14 Q So the rest of - the other two thousand that was
15 divided between Riley and Gray, thirteen hundred
16 for Riley and seven hundred for Gray was in your
17 presence, is that right, sir?

18 A Yes, sir.

19 Q And the hundred you simply gave to Deputy Costantino?

20 A Yes, sir.

21 Q Do you know anything about either Mr. Gray or Mr.
22 Riley?

23 THE COURT: You mean now or then?

24 BY MR. HILL:

25 A With reference to what?

1 Q With respect to their background?

2 A Yes, sir.

3 Q What do you know about them?

4 A I know that both of them are convicted criminals.

5 Q Do you know what kind of crimes they have been
6 convicted of?

7 A Chiefly narcotics violations.

8 Q All right. Neither of them are trained police
9 professionals, is that correct?

10 A Yes, sir.

11 Q They are not is what you are telling me?

12 A That's correct, they are not trained.

13 Q Do you know if either of them received any training
14 before they were sent out in connection with this
15 investigation?

16 A No, sir.

17 Q Any instructions that you know of?

18 A No, sir.

19 Q They were not --

20 THE COURT: You are saying you don't know --

21 THE WITNESS: I'm saying I don't know what
22 instructions they were - they might
23 have been given or they were - they
24 might have been given or if they were
25 given.

1 BY MR. HILL:

2 Q Well, on those occasions then when you were all sitting
3 around eating lunch together at the Armory Tavern
4 I assume you heard no instructions given to them,
5 is that right?

6 A That's right.

7 Q Nor when you were driving around in the police car?

8 A That's right.

9 MR. HILL: Thank you.

10 I have nothing else, your Honor.

11 THE COURT: Thank you, Mr. Shortall.

12
13 (Witness excused.)

14
15 MR. WAGNER: Mr. Wirges.

16
17 L E E W I R G E S (20 Nassau, Kenmore, New York), a
18 Witness called by and in behalf of the Government, having
19 been first duly sworn, was examined and testified as
20 follows:

21
22 DIRECT EXAMINATION

23 BY MR. WAGNER:

24 Q Mr. Wirges, sir, I would like you to tell the Jury
25 what your occupation is?

1 DIRECT EXAMINATION

2 BY MR. WAGNER:

3 Q Mr. Petronella, sir, I would like you to tell the
4 Jury what your occupation is, please?

5 A I'm an undercover agent assigned to the Erie County
6 Sheriffs Department Narcotics.

7 Q Approximately how long have you been with the Sheriffs
8 Department?

9 A Approximately six years.

10 Q And can you describe what kind of duties and what
11 kind of investigations you perform?

12 A I work in an undercover capacity pertaining to the
13 purchase of narcotic drugs.

14 Q Do you ever involve yourself in any other investigations,
15 sir?

16 A Yes.

17 Q And what kinds of work would that be, please?

18 A I was involved in undercover work in prosecution and
19 in the food stamp investigation.

20 Q Now, the food stamp involvement you got into, sir,
21 that was at the beginning of this year following the
22 blizzard?

23 A Yes, sir.

24 Q And were you working at that time, sir, with Investigators
25 from the Department of Agriculture?

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1 A Yes, yes, I was.

2 Q And what was your role in that particular investigation?

3 A To work in an undercover capacity and to sell food
4 stamps for cash or products, goods.

5 Q Do you recall, sir, if in the course of that investiga-
6 tion you used informants?

7 A Yes.

8 Q I would like you to describe for the Jury what you would
9 use an informant for, what you used informants for
10 in those cases?

11 A For the introduction of individuals that I would
12 purchase money from for food stamps or products, the
13 informant would introduce me to the individual.

14 Q Would you explain to them why it was that you used
15 informants in these cases?

16 A They were more known to the informants than to me, I
17 was a stranger, and the people that I did business
18 with knew the informants.

19 MR. HILL: Well, your Honor, I object to the
20 conclusion that the people he did
21 business with knew the informants and
22 also this very vague they knowing the
23 informants, and so on.

24 THE COURT: All right. I tell the Jury this
25 comes through as a generality as to the

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1 reason for utilizing some person such
2 as Mr. Gray and Mr. Riley and is not
3 to be taken by you as applying to
4 specifics of this case. Tell why they
5 are used generally but it does not
6 have anything to do with Mr. Banks at
7 this point.

8 BY MR. WAGNER:

9 Q Now, Mr. Petronella, sir, would you tell us the names
10 of the two informants or as many informants as you used?

11 A Mr. Gray was one, one that was involved with Mr. Banks,
12 and there was another one called Mr. Riley.

13 Q And I would like you to describe for the Jury what
14 kind of arrangement you had with these two informants
15 in order to enlist their aid?

16 A Mr. Gray was compensated with eight hundred dollars
17 and Mr. Riley got eight also.

18 THE COURT: You are giving the end result rather
19 than the arrangement.

20 BY MR. WAGNER:

21 Q Did you have a bargain with them or anything to get them
22 to work with you?

23 A No, it didn't start out that way. It started out
24 that Mr. Riley - Mr. Gray needed money, seventy dollars,
25 and he was going to help me for the seventy dollars.

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1 Q And I take it that that seventy dollars was money
2 from some agency?

3 A Yes.

4 Q And what agency was it originally from?

5 A The U. S. Department of Agriculture.

6 Q Do you know, sir, if there were any other promises
7 or any other deals made with these fellas?

8 A No, not to my knowledge.

9 Q Can you describe with their backgrounds are generally?

10 A Mr. Gray sold heroin to me in 1973, and Mr. Riley
11 sold heroin to me in 1974, both were given lifetime
12 probation.

13 Q When did they become informants working with you?

14 A Mr. Gray became an informant in 1974 and I believe
15 Mr. Riley became an informant in 1975 I believe it
16 was.

17 Q Other than being paid in these particular food stamp
18 cases were there any other favors done such as disposing
19 of charges or anything like that?

20 A No, not to my knowledge.

21 Q Now, were there other agents from your Sheriffs
22 Department involved in these investigations?

23 A Yes.

24 Q And who was that, sir?

25 A Captain Costantino, Detective Maynes, Detective

31.

1 Costanza, Detective O'Neill, I believe that was it
2 from our department.

3 Q Now, Mr. Petronella, did you have occasion in the
4 course of your investigation to deal with this subject
5 by the name of Glenn Banks?

6 A Yes, sir.

7 Q Do you see Mr. Banks in the court room today, sir?

8 A Yes, I do.

9 Q Would you point him out for us, please?

10 A Sitting next to counsel with the dark blue jacket,
11 light blue shirt.

12 MR. WAGNER: Let the record reflect that Mr.
13 Petronella has identified the
14 Defendant.

15 BY MR. WAGNER:

16 Q Would you tell the Jury when it was that you first
17 met or dealt with Mr. Banks?

18 A I met with Mr. Banks on February 25th 1977.

19 Q And I would like you to describe the initial preparations
20 you made for that meeting, how it came about, what
21 happened?

22 A Mr. Gray told me to pull up in front of Harris Hard-
23 ware on Ferry near Waverly Street, Mr. Gray got out of
24 the car, went into the hardware store, after a moment
25 or so, a couple moments at the most, he returned back

1 to the vehicle and signaled me to go inside the hardware
2 store.

3 Q Now, before you went there with Mr. Gray had you taken
4 anything with you or done anything for the purposes
5 of this investigation?

6 A Yes.

7 Q What was that, please?

8 A I had a body NAGRA on my side, tapes.

9 Q Can you explain to the Jury what it looks like and
10 where you had it specifically?

11 A It's a box approximately between five and six inches
12 long, approximately about an inch and a half thick,
13 and approximately four inches in width and I had it
14 on my side underneath my underwear, underneath a
15 tee shirt, the microphone would come up underneath
16 the tee shirt, clip onto my tee shirt. I then had a
17 shirt on above that, a sweater and a fur coat.

18 Q Did you have anything else with you when you went
19 to see Mr. Banks?

20 A Food stamps.

21 Q Where did you get those, sir?

22 A From Mr. Shortall of the Department of Agriculture.

23 Q Do you recall approximately how many food stamps you
24 had?

25 A One thousand dollars worth.

33

A. I met with Mr. Banks at Harris' Hardware on Waverly -

1 excuse me - on Ferry near Waverly in the City of
2 Buffalo in the latter part of the afternoon, I met
3 with Mr. Banks inside the hardware store, I was alone
4 at the time, and I had a conversation with Mr. Banks
5 relevant to the purchase of food stamps, Mr. Banks --

6 THE COURT: You have not been asked about the
7 conversation.

8 THE WITNESS: I'm sorry.

9 BY MR. WAGNER:

10 Q Can you tell me, sir, how you got to Mr. Banks'
11 establishment that day?

12 A I drove there.

13 Q Was there anyone with you at the time?

14 A No, sir.

15 Q Now, I would like you to tell me, sir, as best you
16 recall what you said to Mr. Banks and what he said to
17 you?

18 A I stated to Mr. Banks that I had more food stamps,
19 Mr. Banks stated to me that he does not keep large
20 sums of money at the hardware store and he asked me if
21 I would come back in a half hour.

22 Q Did you tell him how many stamps you had at that time,
23 sir?

24 A No, I did not.

25 Q As best you can recall, did you have any other conversa-
tion with him at that particular time?

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1 A. No, sir.

2 Q. What did you do after that conversation?

3 A. Left the establishment and went onto another part of the
4 investigation.

5 Q. Did you go back and see Mr. Banks at that time?

6 A. No, sir.

7 Q. Why not?

8 A. I got involved in another part of the investigation.

9 Q. You ran out of time?

10 A. Yes, sir.

11 Q. Did there come a time anytime thereafter that you saw
12 and met with Mr. Banks again?

13 A. Yes.

14 Q. And when was the next time after that?

15 A. On the 28th of February 1977.

16 Q. Now, describe for us, sir, what preparations you made
17 immediately prior to seeing Mr. Banks on that day?

18 A. I was - I had a NAGRA taped on the lefthand side of
19 my body. Also on --

20 Q. Excuse me. You had the NAGRA tape or the --

21 A. The NAGRA on my lefthand side of my body and the Aide
22 was put on the righthand side of my body under my
23 underwear, under my tee shirt and I had a shirt on
24 and sweater and a fur coat.

25 Q. Did you have any food stamps with you at that time, sir?

36a

- 1 A Yes.
- 2 Q Do you recall how many?
- 3 A I believe I had three thousand dollars worth.
- 4 Q And where had you received those food stamps?
- 5 A From Mr. Shortall, the U. S. Department of Agriculture.
- 6 Q Now, did you go and see Mr. Banks that day on the 28th,
- 7 sir?
- 8 A Yes, I did.
- 9 Q And describe for us who went with you, how you got there
- 10 and what you did?
- 11 A I was driven to the hardware store by Mr. Riley, I
- 12 entered the hardware store myself and had a conversa-
- 13 tion with Mr. Banks.
- 14 Q Was there anyone else with you and Mr. Riley on the
- 15 28th, sir?
- 16 A No, sir.
- 17 Q Now, would you describe for us approximately what time
- 18 it was and what you did?
- 19 A Approximately 3:10 p.m. that afternoon.
- 20 Q Tell us what happened when you got there?
- 21 A I had a conversation with Mr. Banks pertaining to the
- 22 three thousand dollars in food stamps that I had.
- 23 Once again, Mr. Banks told me he does not keep large
- 24 sums of money in the hardware store and asked me if
- 25 I would come back in a half hour, I stated I would,

1 Mr. Banks stated, "Don't do what you did to me the
2 last time saying that you were coming back and not
3 come back.", I told him that I would come back, and
4 I left the hardware store.

5 Q Okay. Where did you go when you left?

6 A To another part of the investigation.

7 Q Now, when you met with Mr. Banks that initial time on
8 the 28th was there anyone else with you in the
9 establishment?

10 A Myself, Mr. Banks, and there was a customer in the
11 store and I believe a woman behind the counter, if I
12 recall correctly.

13 Q Did you leave the store and come back?

14 A Yes.

15 Q Where did you go in that half hour?

16 A Another part of the investigation.

17 Q Did you go back to see Mr. Banks then?

18 A Yes, I did.

19 Q Can you describe what happened when you went back?

20 A I returned to the hardware store alone this time, it
21 was approximately 3:40 p.m., I entered the hardware
22 store, had a conversation with Mr. Banks, told Mr.
23 Banks that I had the stamps in the trunk of the car
24 and that I did not want to do it inside the hardware
25 store. Mr. Banks came out to the trunk of the vehicle.

1 I then gave Mr. Banks three thousand dollars in food
2 stamps and Mr. Banks gave me nine hundred dollars in
3 currency.

4 Q Now, Mr. Petronella, do you know if a tape recording
5 was being made of that transaction?

6 A Yes.

7 Q Can you describe, sir, how you turned on the Aide
8 unit which was used by you at that time, sir?

9 A I turned on the NAGRA and the Aide Unit prior to going
10 in to talk to Mr. Banks.

11 Q Did you turn either of them off while you were in with
12 Mr. Banks?

13 A No, sir.

14 Q When did you turn the recording devices or the trans-
15 mitting devices off?

16 A When the transaction was completed.

17 Q Now, where did the actual transaction with Mr. Banks
18 take place?

19 A In front of Mr. Banks' hardware store on Ferry Street
20 near Waverly.

21 Q Do you know of photographs were taken of that, sir?

22 A Yes.

23 Q I'll show you what is marked as Government Exhibits
24 10 through 21, I'll ask you to look at those and tell
25 us what those are, please, if you know?

39.

Jury?

THE COURT:

Show them to the Jury.

Look at one and then pass it
along so they are flowing through.

(Government's Exhibits Numbered
10 through 21 handed to the Jury.)

THE COURT;

Pick up those transcripts from
the Jury, Mr. Wagner.

All right, go ahead.

DIRECT EXAMINATION CONTINUED

BY MR. WAGNER:

Q Mr. Petronella, sir, following your meeting with
Mr. Banks on February 28th 1977 would you tell us
if you had occasion to meet with him or talk with
him again since then?

A Yes.

Q And when was the next time, sir?

A I believe it was March 7th 1977.

Q Is that your best recollection of when it was?

A Yes.

Q Would you describe for the Jury what happened on that
day, sir?

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- 1 A I had a conversation with Mr. Banks over the telephone.
- 2 Q Now, where were you when you spoke with Mr. Banks?
- 3 A At 134 West Eagle in the Narcotics Office.
- 4 Q That's at the Sheriffs Department Office?
- 5 A Yes.
- 6 Q And approximately, sir, what time was that, if you
- 7 can recall?
- 8 A Early afternoon.
- 9 Q Now, I would like you to tell -- Did you call Mr.
- 10 Banks or did he call you?
- 11 A I called him.
- 12 Q I would like you to tell the Jury as best you can
- 13 recall what you said to Mr. Banks and what Mr. Banks
- 14 said to you?
- 15 A I stated that I would have more food stamps and that
- 16 Friday would be my last day, the 11th of March.
- 17 At this time Mr. Banks stated that he was interested
- 18 in purchasing more food stamps from me and that he
- 19 had merchandise that he could give me other than money
- 20 such as T.V.'s, lamps, clocks, and small appliances.
- 21 Q What did you say to Mr. Banks in response to that,
- 22 if anything?
- 23 A I stated that I would be interested, if anything,
- 24 would be the television sets.
- 25 Q What did he say?

1 A He stated that he could get me four television sets
2 and asked me how long I would be, I stated that I
3 was in the downtown area and I could be there within
4 the half hour, he stated to me that he had to pick
5 them up and that he would meet me at the store within
6 the half hour.

7 Q Any other conversation with him at that time?

8 A Not that I recall, no.

9 Q Did you then go and see Mr. Banks later then as planned?

10 A Yes.

11 Q Would you describe for us who went?

12 A I drove the undercover car myself and I was surveilled
13 by Detective Costanza and I believe Detective Mayne.

14 Q Were Mr. Riley or Mr. Gray with you at that time,
15 sir?

16 A No, sir.

17 Q Now, can you recall about how long after the conversa-
18 tion it was that you got to Mr. Banks?

19 A Approximately a half hour, forty-five minutes.

20 Q And you went back to the same place you had been
21 before?

22 A Yes.

23 Q Now, I would like you to describe for the Jury, sir,
24 whether or not you had with you at that time anything
25 either on your person or in your possession?

1 A I had the - I was equipped with the Aide transmitter
2 receiver kit on my righthand side and I had the
3 NAGRA on my lefthand side.

4 Q Did you have any food stamps with you at that time?

5 A Yes.

6 Q Do you recall how many you had?

7 A I was given a package of one thousand forty food
8 stamps by Mr. Shortall.

9 Q Do you know why the amount was one thousand forty?

10 A The books were sixty-five dollar books and they just
11 happened to break on one thousand forty.

12 Q Now, when you got to Mr. Banks' establishment I
13 would like you to tell the Jury, as best you recall,
14 what happened at that time?

15 A I pulled up in front and Mr. Banks was in the doorway
16 and a conversation ensued that the four televisions
17 were in the window. Mr. Banks instructed two
18 individuals that were in the hardware store to load
19 them in my vehicle and two were put in the trunk and
20 two were put in the car. After they were put into
21 the vehicle a conversation - I had a conversation
22 with Mr. Banks pertaining to the money in which I
23 offered Mr. Banks six hundred dollars in food stamps
24 and he wanted more. We then settled on one thousand
25 forty dollars in food stamps for the four televisions.

1 Q Okay. Now, was there anyone else present when you
2 were having this conversation with Mr. Banks?

3 A The two individuals that were holding the television
4 sets, I don't know if they overheard.

5 Q Did you have the Aide unit transmitter in operation
6 at the time?

7 A Yes.

8 Q When had you turned that on?

9 A Prior to the conversation with Mr. Banks.

10 Q And when did you turn it off?

11 A When the transaction was completed.

12 Q Did you turn it off at all during the conversation
13 with Mr. Banks?

14 A No, sir.

15 Q The television sets that were put in your car, what
16 did you do with those, sir?

17 A They were brought to the Erie County Sheriffs Depart-
18 ment at 134 West Eagle and they were secured by
19 Captain Costantino.

20 MR. WAGNER: Your Honor, I have some exhibits
21 that were bulky and I didn't want them
22 on display and I asked Mr. Walsh if
23 we could keep them out of display
24 until we needed them.

25 THE COURT: What are you going to do, bring

1 Q Mr. Petronella, getting to the tape, the actual tape
2 later because of a technical problem here, can you
3 tell us following that transaction on March 7th
4 with Mr. Banks have you had any other dealings with
5 him personally or on the phone?

6 A Yes.

7 Q And when was the next time thereafter?

8 A I believe I had a conversation --

9 THE COURT: You say I believe.

10 BY MR. WAGNER:

11 A I had a conversation with Mr. Banks on the 9th of
12 March, 1977.

13 Q Are you sure about that date?

14 A No, not -- To the best of my recollection, I think
15 it was the 9th.

16 Q Tell us, sir, about what time of day that conversation
17 was, if you can recall?

18 A Early afternoon.

19 Q And where was the call made from or received by you?

20 A It was made --

21 MR. HILL: I object to the leading. There's
22 no testimony that there was a call
23 made or received.

24 THE COURT: He said he talked with him.

25 BY MR. WAGNER:

1 Q How did you talk with him?

2 A On the telephone. I called Mr. Banks.

3 Q You called him or he called you?

4 A I called.

5 Q And where were you when you called him?

6 A The Narcotics office.

7 Q And that's here in Buffalo?

8 A 134 West Eagle.

9 Q When you got Mr. Banks on the phone, I would like you
10 to tell us - did you get Mr. Banks on the phone?

11 A Yes, I did.

12 Q Tell the Jury, as best you recall, what you said to
13 him and what he said to you at that time?

14 A I stated that Friday would be the last day that I
15 would be in town, and Mr. Banks stated to me that he
16 would be interest'ed in thirty thousand dollars worth
17 of food stamps, and I asked him what would be the
18 best time to come by and he stated between three
19 and four p.m. on Friday, and the price was discussed.

20 Q Tell us, as best you recall, what words were said by
21 you and by Mr. Banks?

22 A I stated that I would have the thirty thousand dollars
23 in food stamps if Mr. Banks would have the money, he
24 stated that he would have nine thousand dollars and
25 that he would be there between three and four p.m. on

46

1 the 11th of March, 1977.

2 Q Any other conversations with him at that time that
3 you can recall, sir?

4 A No.

5 Q Now, did there come a time on the following day or
6 following couple of days that you actually did go
7 and meet Mr. Banks?

8 A Yes.

9 Q And when was that, sir?

10 A On the 11th of March, 1977.

11 Q Now, immediately prior to going to see Mr. Banks
12 that day did you have any food stamps with you?

13 A Yes. I was given thirty thousand dollars worth of
14 food stamps by Mr. Shortall from the United States
15 Department of Agriculture.

16 Q And what did you do with those stamps?

17 A I put them in the trunk of the car that I was using
18 and drove up in front of Harris' Hardware where I met
19 Mr. Banks.

20 Q Was there anyone else with you at that time, sir,
21 in your car?

22 A No, I was alone.

23 Q Do you know if there were other agents in the area
24 at that time?

25 A Yes.

47.

1 Q Do you know what their purpose was?

2 A To surveil me and to make the arrest of Mr. Banks.

3 Q Do you know if there was a warrant for Mr. Banks'
4 arrest at that time?

5 A Yes.

6 Q Did you go in and talk to Mr. Banks, sir?

7 A I talked to Mr. Banks at the doorway of the hardware
8 store.

9 Q I would like you to describe to the Jury, as best you
10 can, what happened at that time?

11 A I told Mr. Banks that I had the stamps, that they were
12 in the car, and he told me to wait a minute, that he
13 was going to get the money or get a sack to put the
14 stamps in and then get the money, and I told him they
15 were in a bag, not to worry, and he said he would get
16 the money and come back.

17 Q Did he get the money?

18 A Yes.

19 Q Would you describe what happened?

20 A I returned to the undercover car, Mr. Banks after a
21 few moments returned to me, I left the undercover car,
22 opened up the trunk and gave Mr. Banks thirty thousand
23 dollars worth of food stamps, in return Mr. Banks gave
24 me nine thousand dollars in United States currency.

25 Q Do you recall, sir, what happened after that?

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1 A. The surveillance team arrested Mr. Banks and I turned
2 the money over to Captain Costantino.

3 Q. Let me show you what has been marked as Government
4 Exhibit 23 for identification, I will ask you, sir,
5 to look at that and tell the Jury what that is, if
6 you know?

7 A. Yes. This is the money, the nine thousand dollars
8 that Mr. Banks had given to me on March 11th 1977.

9 Q. Can you describe, sir, how the food stamps were - the
10 thirty thousand dollars worth of food stamps were
11 packaged or carried by you?

12 A. Yes. They were in ten thousand dollar bundles and
13 there were ten bundles in each brown paper bag and
14 there were three brown paper bags.

15 MR. WAGNER: Your Honor, I have one more exhibit
16 that Mr. Walsh can get out for me.

17 BY MR. WAGNER:

18 Q. Mr. Petronella, sir, I'll show you what's been marked
19 as Government Exhibit 52 for identification and 53
20 for identification and 54 for identification, I'd
21 like you to look at those, sir, and tell us if you
22 know what those are?

23 A. Yes. These are the three bags that I had on March
24 11th 1977, and these are the stamps that I sold Mr.
25 Banks on March 11th 1977.

1 Q Now, Mr. Petronella, were you present when the agents
2 came in and arrested Mr. Banks?

3 A Yes. I was on the corner of Ferry and Waverly, not
4 present in the same area of them but maybe fifty feet
5 away or so.

6 Q And what did you do after that?

7 A I met with Costantino, Captain Costantino, and turned
8 over the nine thousand dollars in currency.

9 Q And so far as that transaction goes that was the extent
10 of it with Mr. Banks that day?

11 A Yes.

12 Q And you haven't had any further dealings with Mr. Banks
13 since then, is that right, sir?

14 A No.

15 MR. WAGNER: Your Honor, I have no further
16 questions of Mr. Petronella at this
17 time.

18 With the exception that was
19 mentioned by Mr. Hill earlier at the
20 side bar, I'm not sure how we are
21 going to handle that. Perhaps I could
22 discuss that with you.

23 THE COURT: Well, I don't know how you are
24 going to handle it either.

25 I had planned, ladies and gentlemen,

1 right?

2 A. No, sir.

3 Q Now, the purchase reports, again getting back to the
4 point I was on before, are made the same day that the
5 business has been conducted, is that right?

6 A. Correct.

7 Q And is it a situation where you come back to your
8 office while the events are still fresh in your mind
9 and prepare the report?

10 A. At times or at the end of my tour of duty.

11 Q All right. And did you read the purchase reports
12 that you prepared in connection with this case?

13 A. Yes.

14 Q Now, I think you testified a little bit about what
15 prompted this whole investigation or what kicked it
16 off. When the news of this investigation broke on
17 March the 12th there were naturally some stories in
18 the newspapers, do you remember reading those?

19 A. Yes.

20 Q And was it reported in those reports that this investi-
21 gation was prompted at least in some part by stories
22 that had appeared in the news media, do you remember
23 reading that?

24 A. No, I don't recall.

25 Q Well, is it correct that this investigation was prompted

1 at least in part by stories that appeared in the
2 news media?

3 A I don't recall. I was told by my Captain to participate
4 in the investigation.

5 Q So you don't know what really triggered it, do you?

6 A No, sir.

7 Q All right. Was part of the background of this investi-
8 gation the fact that there had been some sort of
9 reports circulating about there being some kind of
10 a black market in food stamps in the City of Buffalo?

11 A Yes.

12 Q And was it part of your job or part of the scope of
13 the investigation to try and go out and to locate
14 this black market?

15 A Yes.

16 Q And had you received some - well, give me just a minute
17 here. Let me see if I can find something in my notes.
18 Had you received some, well, let's call it reports
19 again that there were, you know, actually people out
20 on the street selling food stamps?

21 A Yes.

22 Q And that there were people standing around outside
23 Banks' trading in food stamps?

24 A No, I didn't hear that, no.

25 Q You didn't hear that. Or using them in card games?

1 A. No.

2 Q. Or using them to purchase liquor?

3 A. Yes.

4 Q. Okay. Would you call these reports that you heard
5 rumors?

6 A. No. I heard them from reliable informants.

7 Q. Wait a minute.

8 MR. HILL: Your Honor, I would ask that the
9 answer be stricken, it's not responsive.

10 THE COURT: All right. The answer is stricken.
11 Read the question.

12 MR. HILL: And I would ask that the Jury be
13 instructed to disregard it also.

14 THE COURT: The Jury will disregard it.

15 MR. HILL: Would you read back the question,
16 please.

17
18 (Question read.)

19
20 THE WITNESS: I don't know how to answer it,
21 your Honor.

22 THE COURT: All right. Ask the question.

23 BY MR. HILL:

24 Q. Were these reports hard evidence?

25 A. In some of the cases that I was involved with, yes.

1 Q And you testified in this court in the Jones case,
2 isn't that correct?

3 A Yes.

4 Q And didn't you testify at that trial that while you
5 wouldn't call the reports that you had rumors you
6 wouldn't call them evidence either, that you would
7 call them something in between, wasn't that your
8 testimony?

9 A I don't recall.

10 Q Now, in response to these reports this investigation
11 was started and a team was set up, is that right?

12 A Yes.

13 Q And you were a part of that team?

14 A Yes.

15 Q Who was the one man in charge, who was the top man?

16 A I believe Captain Costantino was my boss.

17 Q Was Captain Costantino in charge of the overall
18 operation?

19 A No. I believe it was in cooperation with the U. S.
20 Department of Agriculture and the U. S. Attorney's
21 Office.

22 Q All right. Well, did Captain Costantino tell Mr.
23 Shortall, for example, from the U. S. Department of
24 Agriculture what to do, give him orders?

25 A I have no idea.

1 Q Do you know if he made suggestions to him?

2 A It was a joint operation. They would meet and have
3 meetings. I didn't attend these meetings.

4 Q Did you ever make any suggestions to Mr. Shortall
5 as to how things should be handled?

6 A I don't recall.

7 Q Did you give him any instructions or suggestions about
8 how many dollars worth of food stamps should be
9 provided for the investigation?

10 A Yes.

11 Q Did you give him any instructions or suggestions
12 as to how much money should be used or should be
13 available anyway to compensate special employees
14 or informants?

15 A No, sir.

16 Q Now, as part of this investigation plan you planned
17 it in great detail, isn't that correct?

18 A On a daily basis, yes.

19 Q All right. And part of the plan involved, of course,
20 tape recordings of certain conversations, right?

21 A Correct.

22 Q And it included photographing suspects in the act,
23 so to speak, is that right?

24 A That's one, yes.

25 Q And it involved putting florescent powder on the stamps

1 to show who had handled that, and so on?

2 A. Yes.

3 Q. Now, of course, it involved yourself as an undercover
4 police officer, is that correct?

5 A. Yes.

6 Q. By the way, what training did you receive after you
7 left the restaurant as an undercover police officer?

8 A. I went to the Academy run by the State of New York
9 to become a certified police officer. I attended a
10 Police Academy run by the Federal Bureau of Narcotics
11 at Erie County Community College and various seminars
12 pertaining to New York State law.

13 Q. All right. How much of that training is devoted to
14 undercover work?

15 A. Training that I received?

16 Q. Yes.

17 A. I received the majority of my training on the street.

18 Q. So your formal training was in general police
19 operations, is that right?

20 A. Other than the Federal Bureau of Narcotics school
21 that was generally for the - the majority for undercover
22 work in the purchase of drugs.

23 Q. Which was, the narcotics school?

24 A. Yes.

25 Q. Okay. So the rest of it was general police work, is

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1 that right?

2 A. Yes.

3 Q. And the narcotics school dealt specifically with
4 drug cases, handling them?

5 A. Correct.

6 Q. And part of that school gave you some formalized
7 training in undercover work, --

8 A. Yes.

9 Q. -- is that right?

10 A. And I was assigned to the Federal Bureau of Narcotics
11 for a year for training.

12 Q. Now, you mentioned Mr. Gray as a person who introduced
13 you to Mr. Banks, is that right?

14 A. Yes.

15 Q. Now, Mr. Gray is not a trained police officer, is he?

16 A. No, sir.

17 Q. All right. Now, again getting back to these articles
18 that were in the paper following the release of the
19 news of this investigation on March 12th there was a -
20 do you remember reading an article in the Buffalo
21 Evening News that talked about your work in particular?

22 A. Yes.

23 Q. You read that article?

24 A. Yes.

25 Q. Do you remember this statement apparently referring to

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1 you, this would be Tony Cardinale's article in the
2 Buffalo Evening News, tell me if you remember it,
3 I'm quoting, "He's wearing a long flashy fur coat
4 when he walks into a liquor store on that dingy
5 Buffalo street. The rabbit coat looks like gawdy
6 money, in this case it's Federal food stamps.", do
7 you remember that?

8 A. Yes.

9 Q And is that an accurate statement?

10 A. No.

11 Q You don't feel that's accurate?

12 A. No.

13 Q Well, you did wear a rabbit coat, didn't you?

14 A. Yes.

15 Q A very big fur coat that hung down below your knees?

16 A. Yes, sir.

17 Q And I don't know if it was an expensive coat but didn't
18 it look like a very expensive coat?

19 A. It's kind of an old rabbit coat.

20 Q An old rabbit coat. Was it your intention to make
21 yourself look like some sort of an underworld wheeler
22 dealer?

23 A. No, sir.

24 Q It wasn't?

25 A. No, sir.

1 Q So the statement in the News then was an exaggeration,
2 is that what you're telling me?

3 A Yes. It was worn to hide the bugging equipment, being
4 bugged.

5 Q All right. Now, is it correct that one of the
6 purposes of your investigation was to go out and find
7 people to buy food stamps and then to arrest and
8 prosecute the people who bought them from you?

9 A Not in entirety, no.

10 Q Was that one of the purposes?

11 A No.

12 Q That didn't even cross your mind?

13 A No.

14 Q Well, when you sold these stamps what did you expect
15 to happen to the people who bought them from you?

16 A To be arrested. But I understand your question to
17 say did I go out and just solicit people to purchase
18 food stamps.

19 Q No, that's not what I said.

20 A I'm sorry.

21 Q What I said was was one of the purposes underlying
22 your investigation to go out and find purchasers for
23 food stamps and then to arrest and prosecute those
24 people who you sold the stamps to?

25 A Yes.

1 Q All right. Thank you. Did you or, to your knowledge,
2 anyone else connected with the investigation sell
3 food stamps to anyone who was not arrested and
4 prosecuted?

5 A No, not to my knowledge.

6 Q Do you know if any stamps were sold to a man named
7 Bellamy?

8 A No.

9 Q Or a man named Glover?

10 A No.

11 Q You don't know or they were not sold to those people,
12 what does no mean?

13 A I don't know if they were sold and I did not.

14 Q All right. Now, there were a dozen people including
15 Mr. Banks who were arrested and charged in these cases,
16 is that right?

17 A Yes.

18 Q And they were all purchasers of food stamps, is that
19 right?

20 A Yes.

21 Q Were there any sellers of food stamps arrested?

22 A Not to my knowledge, no.

23 Q Did you find any sellers of food stamps out there on
24 the streets?

25 A No.

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1 Q Did you look for any?

2 A No.

3 Q Do you know where this black market that was supposed
4 to have existed was to be found?

5 A In the buying of food stamps?

6 Q Buying and selling? Well, let me back up. For there
7 to be buyers there has to be sellers, I mean there
8 has to be both for there to be a black market, is
9 that right?

10 A I was told to concentrate on the people that was
11 purchasing --

12 Q Excuse me.

13 MR. HILL: Your Honor, again I ask that the
14 answer be stricken and the Jury
15 instructed to disregard it.

16 THE COURT: All right. The Jury will ignore
17 it.

18 Read the question.

19
20 (Question read.)

21
22 BY MR. HILL:

23 A Yes.

24 Q And you didn't find any sellers?

25 A I didn't look for any sellers.

1 Q All right. So is it fair to say that you weren't
2 looking for a black market?

3 A I was instructed --

4 Q No. Just yes or no. Is that fair to say?

5 A No.

6 Q That's not fair to say that you were looking for a
7 black market, all right.

8 A No.

9 Q All right. Now, in connection with the sales that
10 you were involved in including the sale to Mr. Banks,
11 you made more than one sale to a number of individuals,
12 is that right?

13 A Correct. All but one.

14 Q And wasn't that one single sale enough for you to
15 base an arrest on without getting around to the time
16 of the arrest but couldn't you have simply stopped
17 at that one sale and gotten a warrant based on that?

18 A I believe it would have been weak, no.

19 Q So what you are saying is that when you have more than
20 one sale you have got a better case, right?

21 A Yes.

22 Q And in Mr. Banks' situation after you made the first
23 sale it would help - it was kind of a stepping stone
24 to the second sale and the third sale, and so on,
25 isn't that right?

- 1 A Yes.
- 2 Q In fact, isn't it true that when you first went in
3 to Mr. Banks' store on that first occasion on February
4 25th that at that point you didn't even know his name?
- 5 A Correct.
- 6 Q And it wasn't until sometime along, sometime after that
7 first sale that you learned what his name really was,
8 is that right?
- 9 A His true last name, yes.
- 10 Q Yes. As a matter of fact, when you obtained an
11 arrest warrant in this case on March 11th, and you
12 did obtain it on the 11th, didn't you?
- 13 A Yes.
- 14 Q The name that you gave in the warrant was John Doe
15 also known as Glenn Harris, is that right?
- 16 A Yes.
- 17 Q In fact, you didn't really learn Mr. Banks' name
18 until after he was actually arrested and brought into
19 Court, is that right?
- 20 A I believe so, yes.
- 21 Q All right. And somewhere along the way after the
22 first purchase you learned that his name was Glenn,
23 right?
- 24 A I believe I knew his name as Glenn when I approached
25 the location.

1 Q Are you positive that you knew it?

2 You're not positive, are you?

3 A I'm positive.

4 Q We may come back to that.

5 THE COURT: The Jury will ignore the comment.

6 MR. HILL: Excuse me, your Honor.

7 BY MR. HILL:

8 Q Now, in connection with this investigation you used
9 two informants, is that right?

10 A Correct.

11 Q You used Robert Gray and Jimmy Riley?

12 A Yes.

13 Q And I believe your testimony yesterday was that
14 Gray got -- Well, let me back up. How did you get
15 Gray involved here?

16 A He had come to me and explained to me different
17 situations that were going on --

18 Q Well, wait a minute. Now, just --

19 THE COURT: I think it is responsive.

20 BY MR. HILL:

21 A He had come to me and explained to me what was going
22 on in a certain area of the City and at that point --

23 MR. HILL: Now, your Honor, this is hearsay
24 that is going in now, I am objecting
25 to it.

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- 1 THE COURT: I think you asked him how he
2 got Gray, how Gray got involved.
- 3 MR. HILL: Yes, but I wasn't - the intent
4 of the question, your Honor, was not
5 to get him involved with volunteering
6 all kinds of information about what
7 Gray might have told him. What I
8 basically want to know is did he go
9 to Gray or did Gray come to him.
- 10 THE COURT: Be more specific in your question.
- 11 MR. HILL: I will withdraw the question.
- 12 BY MR. HILL:
- 13 Q Did you go to Mr. Gray or did Mr. Gray come to you?
- 14 A Mr. Gray came to me.
- 15 Q All right. And I believe you said that he needed
16 seventy dollars?
- 17 A Yes.
- 18 Q And in exchange for the seventy dollars he offered to
19 provide you with some information, is that right?
- 20 A No.
- 21 Q He offered to work for you?
- 22 A No.
- 23 Q All right. In any event, somewhere along the way
24 you negotiated with him to pay him seventy dollars,
25 is that fair to say?

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1 A. No.

2 Q. Was this seventy dollars paid to Mr. Gray before he
3 started to do any work for you?

4 A. No.

5 Q. At what point was it paid to him?

6 A. When he - when the investigation was completed.

7 Q. Well, was he paid seventy dollars when the investigation
8 was completed and, that was it?

9 A. No.

10 Q. How much was he paid when the investigation was
11 completed?

12 A. I believe eight hundred dollars.

13 Q. Now, what was the basis for Mr. Gray's compensation?

14 A. Loss of work.

15 Q. Loss of work, would you explain that, please?

16 A. He was not doing remodeling for supposedly his sister-
17 in-law what he told me and he was not making money,
18 and being that he was devoting all this time to our
19 investigation that he wanted to be compensated.

20 Q. All right. So he lost time from his regular employment,
21 is that right, is that what you're telling us?

22 A. Odd jobs, yes.

23 Q. Odd jobs. And he worked for you for a period of how
24 long?

25 A. I believe from the 25th of February to March 11th.

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1 Q About two weeks?

2 A Correct.

3 Q And you paid him at the rate then of four hundred
4 dollars a week, is that how the compensation was
5 set?

6 A I did not pay him.

7 Q Well, who do you say paid him?

8 A The U. S. Department of Agriculture gave the money
9 to Captain Costantino and he gave the money to Mr.
10 Gray and Mr. Riley.

11 Q All right. So the money, was his compensation set
12 at four hundred dollars a week?

13 A No. There was no set - to my knowledge, there was no
14 set agreement on any amount of money.

15 Q Well, is it correct that the amount that he was paid
16 depended in part on how valuable his information was?

17 A No, not to my knowledge.

18 Q What was Mr. Riley's compensation?

19 A I believe Mr. Riley received thirteen hundred dollars.

20 Q And what was Mr. Riley's compensation based on?

21 A I have no idea.

22 Q Was there anything in particular, any particular reason
23 why you paid Mr. Riley?

24 THE COURT: Do you mean Mr. Petronella
25 personally?

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1 BY MR. HILL:

2 Q Well, why Mr. Riley was paid out of this program?

3 A Mr. Riley supplied information.

4 Q All right. Again, what was his compensation based
5 on, was it the value of his information, what was it?

6 A No. Why was he given more money?

7 Q Yes.

8 A His life was threatened by a few of the individuals
9 and he left town.

10 Q Okay. Well, did the fact that he had lost his job
11 at Freezer Queen have something to do with it?

12 A Why he was given more?

13 Q Why he was given anything?

14 A He was compensated like Mr. Gray for loss of work,
15 yes.

16 Q Well, he had lost his job at Freezer Queen before the
17 case even started, isn't that right?

18 A No, he never told me that. I don't know.

19 Q Do you remember testifying at the Jones trial that one
20 of the reasons Riley was paid was that he lost his
21 job at Freezer Queen?

22 A Yes.

23 Q And also he needed money to leave town, is that right?

24 A Correct.

25 Q Other than money was either Mr. Gray or Mr. Riley

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1 provided any other compensation or favors?

2 A. Not to my knowledge, no.

3 Q. Had either Mr. Gray or Mr. Riley done any informing
4 for you on any other occasion?

5 A. Prior to the food stamp investigations, yes.

6 Q. Have they done some since?

7 A. Not to my knowledge, no.

8 Q. How many times prior to the food stamp investigation
9 had you used Mr. Riley?

10 A. Many times.

11 Q. How many is many?

12 Can you give us an estimate in the form of a number?

13 A. Probably approximately a hundred heroin and cocaine
14 transactions.

15 Q. Starting when, what year did he start work?

16 A. 1975, I believe.

17 Q. Would it be more or less than two years?

18 A. I believe the end of 1975 into '76.

19 Q. All right. And, of course, now we're into '77. If
20 there were a hundred transactions, is it fair to say
21 that you used him at least on an average of at least
22 once a week?

23 A. In the course of the period?

24 Q. Yes.

25 A. No. He was used in a six month span.

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1 Q So he worked for you for a six month period?

2 A Approximately, yes.

3 Q Were there any odd jobs after that six month period
4 or before it?

5 A I don't recall.

6 Q And how were you basing his compensation in those
7 days?

8 A He had sold heroin to me and his attorney --

9 Q No, no. Excuse me.

10 MR. HILL: Your Honor, I ask that that be
11 stricken as non-responsive. I asked
12 how Mr. Riley's compensation was
13 based in those days, I'm talking about
14 money.

15 THE COURT: All right.

16 Do you understand the question?

17 BY MR. HILL:

18 A I did not give him any money.

19 Q Okay. So it was some other form of compensation?

20 A Yes

21 Q Okay. He sold heroin to you and what happened?

22 A He was charged for the sale of heroin and the District
23 Attorney's office for his cooperation gave him lifetime
24 probation.

25 Q The District Attorney's office what?

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1 A. For his cooperation gave him lifetime probation.

2 Q. Now, the District Attorney's office didn't give him
3 lifetime probation, the Court did, is that right?

4 A. Yes. The District Attorney's office recommended it.

5 Q. At your suggestion because he was cooperating, is
6 that right?

7 A. Yes.

8 Q. And, in fact, the charge that he was actually -- Was
9 he indicted?

10 A. Yes, he was.

11 Q. And the charge that he was under indictment for if he
12 had been convicted would have meant that he could
13 have received life imprisonment, is that right?

14 A. From one to life, yes.

15 Q. He could have received the maximum of life, is that
16 the maximum?

17 A. Yes.

18 Q. That's what his exposure was, life imprisonment?

19 A. Yes.

20 Q. So in exchange for his cooperation an arrangement was
21 worked out whereby the District Attorney's office
22 recommended to the Court that he be put on probation
23 for life rather than in jail, is that right?

24 A. Correct.

25 Q. Now, in Mr. Gray's case, had he worked for you before?

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1 A. Yes.

2 Q. And for how long?

3 A. Approximately a six month period.

4 Q. Was it the same investigation that Mr. Riley had worked
5 in?

6 A. No.

7 Q. When was the six month period?

8 A. Prior to Mr. Riley's six month period.

9 Q. What year?

10 A. The latter part of 1973 to the early part of 1974,
11 I believe.

12 Q. All right. Since that time have you had any contact
13 with him between the latter part of '73 and the
14 early part of '74?

15 A. On a sociable basis, yes.

16 Q. On a sociable basis. The early part of '74 would be
17 what, January, February, something like that?

18 A. I believe so, yes.

19 Q. All right. Well, isn't it correct that in October
20 and November of '74 you had some contact with Mr.
21 Gray in the context of having him arrested and charged
22 for drug dealing?

23 A. Yes.

24 Q. Okay. And was that in October or November of 1974?

25 A. Yes.

- 1 Q And subsequent to that time you were the - is there
2 any question that you were the complaining officer,
3 you were the one who signed the papers, is that
4 right?
- 5 A Yes.
- 6 Q You were the one who made the buy from him?
- 7 A Correct.
- 8 Q Is that right?
- 9 A Yes.
- 10 Q And it took place down at something called the
11 Northumberland Turn in the City of Buffalo?
- 12 A Correct.
- 13 Q And there were apparently a series of transactions
14 there, is that right?
- 15 A Yes.
- 16 Q And then you eventually arrested him for that series
17 of transactions, is that correct?
- 18 A Yes.
- 19 Q And as a result of that series of transactions criminal
20 charges were preferred, brought against Mr. Gray, is
21 that right?
- 22 A Yes.
- 23 Q And those charges that were brought were Class A 3
24 felonies, is that right?
- 25 A Yes.

1 Q And an A 3 felony is one that carries a possible
2 maximum of life sentence in jail, is that right?

3 A Yes.

4 Q And isn't it true that in December of 1974 that the
5 District Attorney moved in the Buffalo City Court
6 to have those charges dismissed so they could be
7 presented directly to a Grand Jury?

8 A I believe his charges were presented to a Grand Jury
9 in one of the sale cases was not the day of the bust
10 and that one was moved to present directly to the
11 Grand Jury.

12 Q All right. Well, was Mr. Gray ever indicted on any
13 of those charges that we're talking about?

14 A Yes.

15 Q Do you know when he was indicted?

16 A He was indicted prior to me arresting him.

17 Q Okay. But for your charges, was he indicted on your
18 charges?

19 A Yes. All but - the day that he was arrested he had
20 sold to me again and he was not indicted on that charge,
21 that charge was settled in City Court, dismissed and
22 presented directly to a Grand Jury.

23 Q Dismissed. All right. Subsequent to his indictment
24 on these charges then -- By the way, do you know
25 when he was indicted, can you give me that information?

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1 A I don't recall. Just prior to him being picked up.
2 Weeks, I believe.

3 Q When was he indicted on the charges that you charged
4 him with?

5 THE COURT: That is what you were talking
6 about?

7 THE WITNESS: Yes.

8 BY MR. HILL:

9 A I don't recall. Prior to his arrest.

10 Q All right. Oh, I see, the indictment was actually
11 returned before he was arrested, is that what you're
12 saying?

13 A Yes.

14 Q All right. What disposition was made of that indict-
15 ment?

16 A He was given lifetime probation.

17 Q Was it under the same circumstances that Mr. Riley was
18 given lifetime probation under?

19 A Yes, sir.

20 Q In other words, he was going to cooperate with you
21 and you made a recommendation to the District
22 Attorney's office to give him a break based on that
23 and the District Attorney's office in turn made the
24 representation to the New York State Supreme Court
25 or County Court, is that right?

1 A He already had cooperated, yes.

2 Q All right. And the Judge over there went along and
3 didn't send him to jail, is that right?

4 A Correct.

5 Q All right. Now, with these men being under a sentence
6 of lifetime probation, naturally if they have any
7 further problems with the law the probation can be
8 revoked and they can be sent to jail for a possible
9 life term, is that that right?

10 A Yes.

11 Q And do you know if Mr. Gray since the time he was
12 put on lifetime probation has had any further
13 problems with the law?

14 A Only one that I know of.

15 Q And what was that?

16 A He was accused of passing a badcheck for some seventy
17 odd dollars.

18 Q Was that a forgery charge in August of 1975?

19 A I don't know the date but --

20 Q Does that sound like it might be it?

21 A I have no idea.

22 Q All right. Was he convicted of that charge?

23 A I have no idea.

24 Q But he hasn't gone to jail since that time, in any
25 event, has he?

1 A. Not to my knowledge, no.

2 Q. By the way, before you made these drug purchases
3 from Gray how had you known him, in what kind of a
4 context?

5 A. I was introduced to him.

6 Q. By whom?

7 A. By a person.

8 Q. Another informant?

9 A. Yes.

10 Q. And, of course, when you were introduced to him Ray
11 was a drug addict, wasn't he?

12 A. I don't know what you consider -- Was he shooting
13 heroin?

14 Q. Was he on any kind of drug?

15 A. I don't know firsthand.

16 Q. Do you know if he's on any kind of drugs today?

17 A. Hopefully not, no.

18 THE COURT: You don't know?

19 THE WITNESS: I don't know.

20 BY MR. HILL:

21 Q. Do you know if at one point he was on drugs?

22 A. I believe he was during the time period that I made
23 purchases from him.

24 Q. And he was a pusher also?

25 A. Yes.

1 Q Do you know if prior to the time that you began
2 dealing with him whether or not he had a record of
3 criminal convictions?

4 A Yes.

5 Q And do you know if he had a felony conviction for
6 promoting gambling?

7 A No. No, I don't.

8 Q Do you know what his convictions were for?

9 A If I recall correctly, I believe he had a drug
10 charge.

11 Q Do you know if he was ever in the policy racket?

12 A No.

13 Q Do you know whether or not he had any convictions
14 for anything other than drug charges?

15 MR. WAGNER: Your Honor, I'm going to object
16 to Mr. Hill going through Mr. Petronella
17 as to Mr. Gray's convictions. I don't
18 really think that is material here.
19 I don't think that's the way to do it
20 anyway. In fact, the man may have had
21 some problems a long time ago, I don't
22 think it bears on this case.

23 THE COURT: Well, it bears upon it only in
24 that whether or not Mr. Petronella
25 reasonably was entitled to rely upon

1 Mr. Gray. That is the only pertinency
2 ladies and gentlemen, at this point.

3 MR. HILL: Well, your Honor, I think it goes
4 to --

5 THE COURT: At this point. It may have later
6 pertinency.

7 BY MR. HILL:

8 Q And when you use an informant or you also call them
9 special employees, is that right?

10 A No. I call them confidential aides.

11 Q Confidential aides, all right. When you use one of
12 those people they are really only as valuable to you
13 as the information they supply, isn't that right?

14 A I have -- No.

15 Q Is it correct or an accurate statement that if one
16 of these special aides was not providing you with
17 any valuable information that you would continue to
18 do business with him?

19 A I have been involved with my informants in a different
20 way, in a closer relationship to try to rehabilitate
21 them and help them, we have become friends.

22 Q Okay. I see. Okay. Well, --

23 MR. WAGNER: Your Honor, I am going to object
24 to the comment Mr. Hill made.

25 MR. HILL: I withdraw them, your Honor. I

1 apologize.

2 BY MR. HILL:

3 Q Now, you mentioned that these fellows provide you
4 with information, correct?

5 A Yes.

6 Q And I think you testified yesterday, correct me if
7 I'm wrong, that Mr. Gray introduced you to Mr. Banks?

8 A Yes.

9 Q That's all he did?

10 A Yes.

11 Q Isn't it correct that Mr. Gray had some conversation
12 with Mr. Banks before you even went into that store?

13 A Yes.

14 Q And, as a matter of fact, after you came in Mr. Gray
15 came over to you near the door and told you what it
16 was Mr. Banks was willing to buy?

17 A Yes.

18 Q How many, you know, a thousand dollars worth of stamps
19 for three hundred dollars?

20 A Yes.

21 Q And he told you?

22 A Yes.

23 Q And that indicated to you, did it, that he had had
24 some conversation with Mr. Banks?

25 A Yes.

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1 Q So he did more than introduce the two of you, is that
2 right, he had some preliminary conversation on your
3 behalf?

4 A I think I testified that he was in there two or three
5 minutes before I entered.

6 Q I didn't ask you how long he was in there. I asked
7 you isn't it true that he had some conversation with
8 Mr. Banks on your behalf?

9 A Yes.

10 Q Now, on the mornings on the days, you know, before
11 you actually went out into the field the investigating
12 team used to meet at the Armory Tavern down on
13 Connecticut Street, is that right?

14 A At times, yes.

15 Q At times or every morning?

16 A No. They would have lunch.

17 Q I'm sorry. Lunch, yes, around noon?

18 A Whatever time. I don't --

19 Q And you would meet there with them, wouldn't you?

20 A Yes.

21 Q Gray and Riley would be there?

22 A They - at times they would be there or would come
23 after.

24 Q Okay. And, of course, Mr. Shortall and the other
25 Sheriffs Deputies would all be there, is that right?

8/.

1 A Yes.

2 Q And then when everybody got together you would make
3 plans for the day's activities, correct?

4 A No. I think they were done on the field.

5 Q Just kind of as you were going along making decisions,
6 that sort of thing?

7 A At times, yes.

8 Q All right. Now, was Mr. Gray instructed in any way
9 of how to handle himself in these situations that he
10 was getting into?

11 A I don't understand how you mean the question.

12 Q Well, did you give him any instructions as to how to
13 handle himself?

14 A He was given instructions on how to participate in
15 the investigation.

16 Q All right. And, of course, once he's out of your
17 presence he himself had no transmitting or recording
18 equipment on his person, did he?

19 A No, sir.

20 Q So you would have no way of overhearing then what he
21 said to various people he was dealing with, is that
22 right?

23 A Correct.

24 Q And you would have no way of knowing whether he was
25 following his instructions, is that correct?

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1 A. Correct.

2 Q Is it a fair statement that Mr. Gray was not provided
3 with recording equipment because you didn't really
4 care to know what he was going to say or do?

5 A No, that's not true.

6 Q Do you know if Mr. Gray went to Mr. Banks' store on
7 any occasion without you?

8 A No.

9 Q You don't know whether or not he did or he didn't?
10 What does no mean?

11 A I don't know.

12 Q In the daily reports that you filed, well, the daily
13 reports, the reports of investigation that you filed,
14 nowhere is mentioned the use of Robert Gray, is that
15 correct?

16 A Correct.

17 Q And, of course, those are reports that are supposed
18 to circulated confidentially within the Sheriffs
19 Department only, is that right?

20 A They're kept in our office only.

21 Q All right. Is there any particular reason why the
22 use of Mr. Gray or Mr. Riley is not mentioned in
23 those reports?

24 A No, sir.

25 Q All right. Do you know -- Of course, those reports are

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1 seen by Sheriff Braun, is that right?

2 A. I don't believe they are, no.

3 Q. Do you know if anyone told Sheriff Braun that these
4 people were being used in this investigation?

5 A. I believe he was informed, yes.

6 Q. Do you know where Robert Gray is today?

7 A. No.

8 Q. Do you know if he's in the City of Buffalo?

9 A. No.

10 Q. Is it a correct statement that Robert Gray's cooperation
11 with you is one of the things that keeps him from
12 getting his lifetime probation revoked?

13 A. That's not true.

14 Q. That's not true?

15 A. No, sir.

16 Q. Have you ever indicated to Mr. Gray that if he doesn't
17 cooperate with you that there's a danger of his proba-
18 tion being revoked and him going to jail?

19 A. I never said that to him.

20 Q. You never suggested that to him?

21 A. Never.

22 MR. HILL: Your Honor, I notice we have our
23 wire man here, would it be possible
24 to get back to the other tape record-
25 ings now?

1 THE COURT: All right, Mr. Hill.

2

3 J O S E P H P E T R O N E L L A (134 West Eagle Street,
4 Buffalo, New York), a Witness called by and in behalf of
5 the Government, having been previously duly sworn,
6 resumed the witness stand and testified further as follows:

7

8 CROSS EXAMINATION CONTINUED

9 BY MR. HILL:

10 Q Deputy Petronella, starting with the first contact
11 you had with Mr. Banks on February the 25th, I
12 believe you testified yesterday that - and today, I
13 suppose, that Mr. Gray went in first and then came
14 out and got you, is that right?

15 A. Yes, called me over to him.

16 Q Now, at no time did you keep any sort of a log
17 reflecting how much time Mr. Gray spent with Mr.
18 Banks, is that correct?

19 A. Correct.

20 Q On any occasion?

21 A. No, sir.

22 Q Although your investigation reports do reflect how
23 much time you spent with Mr. Banks, is that right?

24 A. Yes.

25 Q When you were there on the 25th with Mr. Banks were

1 there other people present?

2 A. Yes.

3 Q. A man named Myles Wirt was present, is that right?

4 A. I'm sorry?

5 Q. A man named Myles?

6 A. Yes, I heard his name called, yes.

7 Q. Were there other people present also?

8 A. Yes.

9 Q. Do you remember any of the others?

10 A. No, not by name. They all were strangers to me other
11 than Mr. Gray.

12 Q. And, of course, in that 25th conversation you got
13 around to joking with Mr. Banks about a ring he had
14 on, is that right?

15 A. Correct.

16 Q. And did he joke back with you?

17 A. I believe so, yes.

18 Q. He asked a little bit about a ring you were wearing?

19 A. I don't recall.

20 Q. Now, the next conversation that we have was on
21 the 28th of February --

22 A. Yes.

23 Q. -- and that was on a Monday, is that correct?

24 A. Yes.

25 Q. And, in fact, when you left Mr. Banks on the 25th you

1 told him that you would call him Monday, those were
2 the arrangements you made anyway, is that right?

3 A. Yes.

4 Q. Now, apparently though something happened that you
5 contacted Mr. Banks next rather than on Monday you
6 contacted him on Saturday, the 26th?

7 A. Yes.

8 Q. And that's a conversation or a contact that was not
9 recorded, right?

10 A. I believe it was recorded on the NAGRA.

11 Q. Oh, a recording of that exists?

12 A. I don't know if it exists but I did have the NAGRA
13 on me.

14 Q. All right. You don't know if the recording exists?

15 A. No, I don't.

16 Q. If it did exist where would it be?

17 A. On the NAGRA reel of the 26th.

18 Q. I see. At that time is it true that you went to
19 Mr. Banks' store to talk to him in person?

20 A. Yes.

21 Q. And before you went back on the 28th did you have
22 any sort of a telephone conversation with Mr. Banks?

23 A. I don't believe I did.

24 Q. All right. Now, when you went there on the 26th did
25 anyone go with you?

1 A I entered the store alone and I had Mr. Riley with
2 me.

3 Q Okay.

4 A I'm not sure if Mr. Gray was with me.

5 Q Might Gray have been with you?

6 A Yes, he may have.

7 Q Do you know if on the 26th Mr. Gray had a conversation
8 with Mr. Banks?

9 A Not to my knowledge.

10 Q Not to your knowledge.

11 THE COURT: You say you don't know?

12 THE WITNESS: I don't know. I'm sorry.

13 BY MR. HILL:

14 Q Now, then after that in person visit -- Let me
15 strike that, please. After you were there on the
16 25th and before you went to the store on the 28th
17 you had no other contact with Mr. Banks other than
18 your in-person visit on the 26th, is that correct?

19 A To the best of my recollection, yes.

20 Q All right. Now, let me show you Government's
21 Exhibit 40 and can you tell me what that is?

22 A This is a purchase report.

23 Q And it relates to the sale made on the 28th that we're
24 talking about, is that right?

25 A Yes.

1 Q Now, under item 2 here it reflects the conversation
2 you had with Mr. Banks, is that right?

3 A Yes.

4 Q And in your statement there it reflects that that
5 conversation was based on an earlier phone conversa-
6 tion, is that right?

7 A Yes.

8 Q And in that phone conversation, according to your
9 notes, your claim is that Mr. Banks expressed an
10 interest in purchasing three thousand dollars worth
11 of stamps for nine hundred dollars, is that right?

12 A Yes.

13 Q And then in the in-person conversation he said he
14 was still interested, right?

15 A Correct.

16 Q So does that change your recollection then as to
17 whether or not there was a phone conversation with
18 Mr. Banks before the 28th?

19 A I still don't recall.

20 Q Well, based on this -- Well, this is your report, isn't
21 it?

22 A Yes.

23 Q What does it indicate to you, does it indicate that
24 there was one?

25 A Yes.

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1 Q And isn't it the fact that that phone call was made
2 by you after Mr. Riley told you that he had gone on
3 his own to see Mr. Banks and discussed further
4 purchases with him?

5 A No, sir.

6 Q I'm sorry. Well, I used Mr. Riley. Did Mr. Gray tell
7 you that?

8 A No, sir.

9 Q Now, on the 28th when you made the sale to Mr. Banks
10 outside of Harris' Hardware Mr. Riley drove the car,
11 is that right?

12 A Yes, sir.

13 Q Was anyone else in the car with you and Mr. Riley?

14 A I don't recall if Mr. Gray was there or not.

15 Q All right. Showing you Government's Exhibit 10 in
16 evidence now, is that a photograph of you and Mr.
17 Banks walking toward the rear of your car?

18 A Yes.

19 Q And this car, the last car you can see in the photo-
20 graph is your car, is that right?

21 A Yes.

22 Q And don't you see two people seated in that car?

23 A I see a shadow, I don't know if it's two people.

24 Q All right. Can you identify Mr. Riley, Mr. Riley
25 as being in the car?

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1 A Mr. Riley is the driver of the vehicle. I was the
2 passenger.

3 Q Well, the point shown in that photograph, you are
4 outside the car, is that right?

5 A Correct.

6 Q Now, can you see Mr. Riley in the car?

7 A I can see a shadow, I don't know if it's Mr. Riley
8 or not.

9 Q Well, where is that shadow located, behind the driver's
10 side, behind the driver's wheel?

11 A There's a shadow in the rear window of the picture.

12 Q Rear window of the car?

13 A Yes.

14 Q Is there another shadow next to that shadow?

15 A There appears to be.

16 Q All right. Can you determine whether or not those
17 shadows are people who are sitting in the car?

18 A No.

19 Q You don't know, is that what you're saying?

20 A I know that Mr. Riley drove me. He was the driver
21 of the car. I don't know if Mr. Gray was with me
22 or Mr. Jones came with me on a few occasions, if Mr.
23 Jones was with me.

24 Q All right. Would you have any sort of a written
25 document that would reflect who was with you?

1 A. No, sir.

2 Q There is a point in the second tape conversation where
3 Mr. Banks says something to someone about coming
4 back in thirty minutes and not screwing him up like
5 they did the last time, do you recall that?

6 A. Yes.

7 Q Wasn't he in fact talking to Mr. Gray?

8 A. No.

9 Q Now, also in the second taped conversation Mr. Banks
10 makes reference to purchasing a larger quantity of
11 stamps, is that right?

12 A. Correct.

13 Q Now, isn't it a fact that Mr. Banks had told Mr.
14 Gray and that Mr. Gray had told you that Mr. Banks
15 had said he didn't need anymore food stamps?

16 A. No.

17 Q And isn't it also a fact that Mr. Gray reported to
18 you that he advised Mr. Banks that if he couldn't
19 use them to, you know, talk to some of his friends?

20 A. No.

21 Q Did you ever make such a suggestion to Mr. Banks?

22 A. No, I did not.

23 Q Now, the third typed conversation related to March
24 the 7th, is that right?

25 A. Yes.

1 Q And isn't it also correct that that telephone conver-
2 sation - that taped conversation was preceded by a
3 telephone conversation which you made to Mr. Banks
4 from the Narcotics office of the Sheriffs Department?

5 A Yes.

6 Q And didn't you indicate to Mr. Banks in that telephone
7 conversation that you were interested rather than
8 getting money this time in getting television sets?

9 A No.

10 Q Well, as payment for the March 7th delivery of stamps
11 television sets were given, weren't they?

12 A Yes.

13 Q And had you before March the 7th discussed television
14 sets with Mr. Banks?

15 A No.

16 Q Not at anytime. Well, how did the subject of television
17 sets come up?

18 A I had called Mr. Banks just to talk to him to try to
19 make arrangements for the conclusion of the investiga-
20 tion and Mr. Banks had asked me for more stamps and
21 I was not instructed to sell more stamps other than
22 two occasions and then Mr. Banks stated that he had
23 lamps and small appliances and various other things
24 that he would give me in return for stamps.

25 Q I see. And what did you say to him?

1 A I said -- I got a motion from Captain Costantino
2 because when Mr. Banks told me television sets I
3 said television sets and then I was instructed to
4 purchase them.

5 Q All right. Now, did he give you any specifics about
6 the television sets which he had?

7 A I really don't recall.

8 Q Did you negotiate a price in that phone conversation?

9 A No, sir.

10 Q All right. So the price was negotiated when you got
11 there on the 7th, is that right?

12 A Yes, sir.

13 Q And the price that you negotiated on the 7th was
14 one thousand forty dollars because that happened to
15 be the amount of stamps that was issued to you at that
16 point, right?

17 A Correct.

18 Q All right. Now, I show you Government Exhibit 44 for
19 identification, can you tell me what that is?

20 A This is a purchase report.

21 Q All right. Relating to which purchase?

22 A The transaction with the televisions.

23 Q On March the 7th?

24 A Yes.

25 Q And what date was that report completed and signed by

1 you on?

2 A I believe on 3-7-77.

3 Q That's the date that's written in the lower righthand
4 corner next to your signature, isn't it?

5 A Yes.

6 Q Now, in the report does it mention anything other
7 than television sets, any of those other appliances?
8 In Item 1 in the report you're discussing the
9 telephone conversation, is that right?

10 A Yes.

11 Q And what does that reflect that you and Mr. Banks
12 discussed in the telephone conversation?

13 A That we had agreed on one thousand forty dollars
14 in food stamps.

15 Q No. We'll get to that in a minute. With respect
16 to the merchandise, what does it reflect that you
17 discussed?

18 A Four black and white television sets.

19 Q What kind, does it say? No, it doesn't, I guess.

20 A No, it does not.

21 Q All right. Four black and white television sets.
22 It doesn't mention anything about lamps or any of
23 those other things, is that right?

24 A No, it doesn't.

25 Q Now, you just told us that the purchase price of a

95.

1 thousand and forty dollars was negotiated on the
2 street when you picked up the sets, correct?

3 A. Correct.

4 Q. What does item 1 on Exhibit 44 reflect about the
5 negotiation of the purchase price?

6 A. That I would give him one thousand forty dollars in
7 food stamps.

8 Q. And does it also reflect that he mentioned an amount
9 of money on the phone?

10 A. Yes.

11 Q. And what does it say happened?

12 A. That he was interested in receiving one thousand
13 six hundred dollars in food stamps.

14 Q. And then what does it reflect happened next?

15 A. I stated that it was too much money and I would give
16 him one thousand forty dollars in food stamps.

17 Q. Now, here in this report you have just given a different
18 version of what happened than what you just testified
19 to, is that right?

20 A. To some extent, yes.

21 Q. Well, all right. Which is correct?

22 A. I don't recall.

23 Q. Isn't what really happened that you called Mr. Banks
24 and told him, "This time I need merchandise.", isn't
25 that what happened?

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1 A. No, sir.

2 Q. And isn't it a fact that what you were doing was
3 hoping to uncover some stolen merchandise so you could
4 get him for that too?

5 A. No.

6 Q. It is a fact that those television sets turned out
7 not to be stolen, right?

8 A. Yes.

9 Q. Now, I believe you testified yesterday that when you
10 went down to the store on this occasion that the T.V.
11 sets were sitting in the window?

12 A. On the righthand side. As I entered the store on the
13 righthand side on a - like a little shelf, yes.

14 Q. On display?

15 A. I don't know if they were on display. They were in
16 boxes.

17 Q. They were in boxes?

18 A. Yes, sir.

19 Q. Did you notice if the boxes were filled up?

20 A. Yes, they were.

21 Q. By the way, on the 7th of March what time of day did
22 you call Mr. Banks, do you know?

23 A. No, I don't.

24 MR. HILL: This will be Defendant's 2, your
25 Honor.

1 THE COURT: All right.

2
3 (Defendant's Exhibit Numbered 2
4 marked for identification.)
5

6 BY MR. HILL:

7 Q Mr. Petronella, this is Defendant's Exhibit 2 marked
8 for identification, can you see the television sets
9 that were given to you reflected anywhere in that
10 exhibit?

11 A No. I don't know if these are the television sets
12 that I bought. Mr. Banks stated that I had two 19"
13 and two 20". This says two 12" and two 19".

14 Q All right. Well the television sets that were referred
15 to in the testimony yesterday as being here, right?

16 A Yes, sir.

17 Q Are the ones that you got from Mr. Banks, is that
18 correct?

19 A Yes.

20 Q And do you know if those television sets have some
21 numbers on them somewhere?

22 A Yes, they do.

23 Q Did Mr. Banks advise you that he had gone out
24 after your phone conversation on the 7th of March
25 and purchased those television sets?

- 1 A. He stated to me that he had to go to the warehouse
2 which was some eighteen or twenty miles away, yes.
- 3 Q. And this was after your telephone conversation, right?
- 4 A. During the conversation, yes.
- 5 Q. Did he tell you why he had to go to the warehouse?
- 6 A. No.
- 7 MR. HILL: Your Honor, at this point it looks
8 like we're going to need tape number
9 four.
- 10 THE COURT: Mr. Carroll has taken off for
11 other regions or something.
- 12 MR. WAGNER: Your Honor, I just asked him to
13 step outside because I feared he might
14 disturb us if he was fooling with that
15 equipment.
- 16 THE COURT: All right. Let's see what condi-
17 tion things are in at this point.
- 18 MR. WAGNER: Your Honor, Mr. Carroll has
19 repaired the cassette tape and I suppose
20 Mr. Banks' attorney wants it played
21 but I would formally offer Government's
22 Exhibit 24 - I'm sorry - 28 at this
23 time into evidence.
- 24 MR. HILL: Your Honor, maybe if I could have
25 just one more question on tape three

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1 if that wouldn't be out of order.

2 THE COURT: Go ahead.

3 BY MR. HILL:

4 Q Deputy Petronella, after you had - this transaction
5 for the television sets had been completed and you
6 discussed a further transaction with Mr. Banks you
7 referred to the fact that they want stuff, anything
8 they can sell, words to that affect, isn't that right?

9 A. Yes.

10 Q And who is they?

11 A. I was just playing myself up, just street talk.

12 Q Yes, okay. And isn't that - wasn't that statement
13 a reflection of what you had told him earlier on the
14 phone also, you told him to get merchandise?

15 A. No, I did not. Mr. Banks suggested it.

16 MR. HILL: Okay.

17 THE COURT: Do you have an objection to
18 Government's Exhibit 28, Mr. Hill?

19 MR. HILL: 28 is the tape number four, I
20 assume, your Honor?

21 THE COURT: That is right.

22 MR. HILL: No, I don't.

23 THE COURT: All right. There being no objection
24 Government's Exhibit 28 is in evidence.

25

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- 1 A. Yes.
- 2 Q. And after the United States Attorney was through
3 questioning you the Grand Jurors had some questions
4 to ask you of their own, didn't they?
- 5 A. Yes.
- 6 Q. And one of the Grand Jurors was sort of curious
7 about the large amount of stamps involved and the
8 large amount of this last sale, isn't that correct?
- 9 A. Yes.
- 10 Q. All right. And showing you Government's Exhibit 37
11 for identification, the bottom of page 5, line 23,
12 and the top of page 6, line 1, that reflects that
13 Juror's questioning, is that right, that's the tail
14 end of it anyway, is that right?
- 15 A. Yes.
- 16 Q. And in response to that question what did you tell
17 the Juror, you volunteered some information there,
18 didn't you, something you hadn't testified to earlier
19 in the Grand Jury proceedings, what did you say,
20 would you read it out loud?
- 21 A. This part here?
- 22 Q. Yes.
- 23 A. "In fact, after I gave him thirty thousand he gave me
24 nine thousand dollars, he said he had another ten
25 thousand dollars in cash with him and he told me he

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1 wanted more."

2 Q All right. Now, that's not anywhere's on tape 4
3 or in the transcript, is it?

4 A No.

5 Q But yet here -- Were you trying to impress the
6 Grand Juror when you threw that information in or did
7 it really happen?

8 A No. It really happened but what it was was phone
9 conversations that I had with Mr. Banks that he had
10 another ten thousand dollars and I had told it to
11 Captain Costantino and he asked Mr. Shortall if he
12 could get more --

13 Q Well, just a minute. I don't want to know what you
14 told Captain Costantino. All right. Your explanation
15 is that this is something else that came up in an
16 unrecorded telephone conversation, is that right?

17 A Yes.

18 Q However, you didn't say it that way in the Grand Jury,
19 did you?

20 A I was just in error, no.

21 Q Just in error.

22 A I misunderstood the question I was asked at the time.

23 Q Well, the question was, and look at here with me,
24 the Grand Juror's question was - maybe I'd better back
25 up to what you say that the question follows, all

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1 right. You say whenever I - whenever I was asked
2 where I got them, meaning the food stamps, right?

3 A. Yes.

4 Q. -- I told them from the United States Department of
5 Agriculture, and then the Juror says just like that,
6 they weren't interested in how you obtained such a
7 large amount, is that right?

8 A. Correct.

9 Q. And your response was, in fact, after I gave him the
10 thirty thousand - strike that - in fact, after I gave
11 him the thirty thousand he gave me nine thousand
12 dollars, he said he had another ten thousand dollars
13 in cash with him and he told me he wanted more, that's
14 what you said, correct?

15 A. Yes.

16 Q. And that was not a direct response to what the Juror
17 had asked you, was it?

18 A. No. I was thinking of the phone conversation.

19 Q. Oh, even though you talked - even though you rated
20 it to receiving the nine thousand dollars, is that
21 right?

22 A. Yes.

23 Q. You didn't receive the nine thousand dollars over the
24 telephone, did you?

25 A. No, I did not.

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1 Q. Actually --

2 THE COURT: What telephone conversation would
3 that be?

4 THE WITNESS: I had a -- When we were making
5 a schedule to pick up the twelve people,
6 a time schedule, I had called all the
7 Defendants up one by one to find out
8 what time they would be at their loca-
9 tions and I said, "Do you still want
10 the stamps?", and the reply was, "Yes.
11 I have another ten thousand dollars,
12 could you get more?".

13 THE COURT: Now, the information, and you
14 will have to correct it if it is not
15 true, the information is Mr. Banks
16 was arrested not by you but by the
17 other agents immediately after this
18 March 11th transaction. Now you are
19 telling us something different?

20 THE WITNESS: No. He was arrested by the
21 Sheriff --

22 THE COURT: Immediately after?

23 THE WITNESS: Yes.

24 THE COURT: Then how come a telephone conversa-
25 tion?

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1 THE WITNESS: The telephone conversation was
2 prior to the transaction on the 11th.

3 THE COURT: All right.

4 BY MR. HILL:

5 Q There is one -- Just to clarify this. Is it true
6 that what you meant to indicate to the Grand Juror
7 was that that had taken part in an earlier telephone
8 conversation?

9 A. I don't know what I meant when I -- Actually it
10 stuck in my mind on account of the conversation I
11 had with Mr. Shortall pertaining to Mr. Banks and
12 Captain Costantino.

13 Q You weren't just trying to add a little extra fuel
14 to the fire, is that right?

15 A. No, I was not, it wasn't meant to.

16 Q All right. So as far as you're concerned in handling
17 these cases you have played it just the way it was
18 without any exaggeration or without trying to do
19 anything to better your own position in your own
20 case, is that right?

21 A. True.

22 Q Thank you.

23 MR. WAGNER: Your Honor, just a couple of
24 questions.

25 REDIRECT EXAMINATION

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1 THE COURT:

All right. Bring the Jury up.

2
3 (Defendant's Exhibits Numbered
4 4 and 5 marked for identification.)
5

6 (Jury present.)
7

8 THE COURT:

Good morning.

9 We are ready to proceed, Mr.
10 Hill.

11 MR. HILL:

Thank you, your Honor.

12 The defense calls Glenn Banks.
13

14 G L E N N B A N K S (159 Riley, Buffalo, New York),
15 the Defendant called as a witness in his own behalf,
16 having been first duly sworn, was examined and testified
17 as follows:

18
19 DIRECT EXAMINATION

20 BY MR. HILL:

21 Q Mr. Banks, how old are you?

22 A Forty.

23 Q And where were you born, sir?

24 A I was born in Raleigh, North Carolina.

25 Q How long have you resided in Buffalo?

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- 1 A. Approximately fifteen years.
- 2 Q. And before that where did you live?
- 3 A. Winston-Salem, North Carolina.
- 4 Q. How far did you go in school?
- 5 A. Ninth grade.
- 6 Q. Are you married?
- 7 A. Yes.
- 8 Q. Do you have any children?
- 9 A. Yes, we do.
- 10 Q. How many?
- 11 A. Eight.
- 12 Q. Now, what's your occupation, Mr. Banks?
- 13 A. We run a hardware store, my wife and I.
- 14 Q. And where is that store located?
- 15 A. It's located at 169 East Ferry Street.
- 16 Q. How long have you been in that business?
- 17 A. For approximately seven years.
- 18 Q. What's the name of your business?
- 19 A. Harris Hardware.
- 20 Q. Now, where does that name Harris come from?
- 21 A. It come from my wife's maiden name.
- 22 Q. What did you do before you were in the hardware
- 23 business?
- 24 A. I'm a glazer and a glass installer.
- 25 Q. Now, Mr. Banks, you have been accused with purchasing

1 food stamps from Joseph Petronella on four occasions,
2 February 25th, February 28th, March 7th and March
3 11th of 1977, did you do that?

4 A. Yes.

5 Q. On March 25th at the time - I'm sorry - February
6 25th, at the time of the first sale where were you?

7 A. I was in the store waiting on a customer.

8 Q. All right. Now, would you describe for the Jury
9 the events that took place before you actually
10 purchased the stamps from Mr. Petronella?

11 A. Yes, I can. I was - like I said, I was waiting on a
12 customer and, in fact, there was two, they were
13 together, and this fellow walked in and I asked
14 Myles to wait on him.

15 Q. Now, this fellow, was that Mr. Petronella?

16 A. No. This was a black man.

17 Q. I'm sorry?

18 A. This was a black guy.

19 Q. All right. Now, did you know who that black man was?

20 A. No.

21 Q. Now, what happened after you asked Myles to wait on
22 him?

23 A. Myles repeated back to me that he wanted to see me.

24 Q. Now, Myles is who, by the way?

25 A. Myles is the guy that helps me around the store part time.

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1 Q What's his last name?

2 A Myles Wirt.

3 Q Is he the gentleman who testified here the last time
4 we were in Court?

5 A Yes.

6 Q Now, after you were told that this fellow wanted to
7 see you what happened next?

8 A When I finished waiting on the customers and then I
9 asked him, you know, could I help him, he asked me
10 did I want to purchase any food stamps, I said no,
11 and then I started, you know, walking around the
12 counter, he asked me again did I want to purchase
13 any food stamps and I said no, he said, "Wait a
14 minute. You haven't heard the deal.", so I didn't
15 say anything, I just listened, and he said he had a
16 thousand dollars worth of food stamps for three
17 hundred dollars, so Myles said, "Gee, I'll take some
18 of them.", and --

19 Q And did this other man say anything else?

20 A Yes. And he said that the reason why that he wanted
21 to get rid of the food stamps was because he was
22 stranded and he needed money to leave town, --

23 Q All right.

24 A -- and I said, "Okay.", and he said he was going to
25 get them.

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1 Q All right. Now, at that point did you know who that
2 man was?

3 A No. No, I had never seen him.

4 Q What happened after he said he was going to get them?

5 A Well, he went out the door. Myles gave me a hundred
6 dollars that, you know, he was going to purchase the
7 stamps with, and I went and got some money which I
8 thought was two hundred dollars that I picked up but
9 later I found out it wasn't, and when I come out of
10 the office that's when I seen Mr. Petronella, he was
11 at the front leaning on the front counter.

12 Q All right. Now, at that point did you know who Mr.
13 Petronella was?

14 A No.

15 Q Had you ever seen him before?

16 A No.

17 Q How was he dressed?

18 A He had a long fur coat on and he wore his hair long
19 and he had a beard.

20 Q The same beard that he has in the court room?

21 A Yes.

22 Q Now, Mr. Banks, I want to show you two pictures, the
23 first one has been marked Defendant Exhibit 4 and the
24 second one has been marked Defendant Exhibit 5, are
25 those pictures an accurate and fair representation of

1 the way that the inside of your store was laid out
2 on February 25th 1977?

3 A. Yes, it is.

4 Q. And in looking at those pictures can you see the loca-
5 tion where you and Deputy Petronella and this other
6 black man and the other people you have told us about
7 were located on February 25th 1977?

8 A. Yes.

9 Q. Well, now just that much.

10 MR. HILL: Your Honor, what I would like to
11 do is offer these photographs into
12 evidence at this time so that the
13 witness can testify from them for
14 purposes of showing where everyone was.

15 THE COURT: All right. Show them to Mr.
16 Wagner.

17 MR. WAGNER: Well, your Honor, I would have no
18 objection to these photographs.

19 THE COURT: All right. Defendant's 4 and
20 Defendant's 5 admitted in evidence.

21
22 (Defendant's Exhibits Numbered
23 4 and 5 received in evidence.)
24

25 BY MR. HILL :

1 Petronella came into the store --

2 THE COURT: Wait a minute. The Jury is
3 looking at the pictures.

4 MR. HILL: All right, we will wait, your
5 Honor.

6 BY MR. HILL:

7 Q Now, Mr. Banks, getting back to the point where
8 Deputy Petronella came into the store where did he
9 stop?

10 A He stopped up near the door, near the counter, he
11 was leaning against there when I first saw him.

12 Q All right. And where were you at that point?

13 A I came out from the office, that's where I saw him,
14 I came from the office, this is behind the counter,
15 and then I walked around the counter.

16 Q And where did you stop?

17 A I stopped - after I came right behind the counter
18 Gray was standing there.

19 Q Now, when you say Gray who do you mean?

20 A Well, the black dude that was in the store.

21 Q How did you learn that his name was Gray?

22 A Well, you told me that's his name.

23 Q Now, did you and Gray have a conversation at that
24 point?

25 A Yes.

1 Q And where with relation to that counter that the
2 office is behind did this conversation take place?

3 A Near the counter there. I asked Gray, you know,
4 what is this, you know, because earlier he had told
5 me he had some stamps and he didn't mention anyone
6 else.

7 Q And what did he say?

8 A And he said they had these stamps together, you know,
9 and they needed the money together.

10 Q Now, how loud were your voices during this conversa-
11 tion?

12 A It wasn't loud, we was close, you know, because quite
13 naturally because I had asked him because there wasn't
14 anyone else that I, you know, looked to see, you know,
15 because it seemed like to me he had, you know, told
16 me something - that he had the stamps and he was the
17 only one that was in trouble that was leaving town.

18 Q Now, what happened next after that conversation?

19 A Then Gray walked back up to him and he spoke to him.

20 Q Could you hear what they were saying?

21 A Not exactly. No.

22 Q Now, when you say to him, who was he talking to?

23 A Petronella.

24 Q Petronella?

25 A Petronella.

1 Q And where did that conversation take place?

2 A Up near the door.

3 Q And then what happened next?

4 A Then Petronella came down toward me and asked me,
5 you know, did I want them, and he took some stamps
6 out and was going to lay them up on the counter, I
7 said, "Don't put the stamps on the counter. We can
8 go back in the work room.".

9 Q Now, then was the sale completed?

10 A Yes.

11 Q And did he give you a thousand dollars worth of stamps?

12 A Yes, he did.

13 Q Did you give him three hundred dollars in cash?

14 A Yes, I did.

15 Q Did you have all the - the whole three hundred dollars
16 with you at that point?

17 A No. I thought I did. When I counted the money it
18 was maybe - I was maybe about twenty dollars short
19 so I had to go back into the office to get the other
20 twenty dollars so at that point I gave Myles the
21 stamps, I handed Myles the stamps, I went back and
22 got the twenty dollars and I came back and then I
23 gave him the twenty dollars.

24 Q Now, you mentioned the work room and an office, are
25 those two separate rooms?

1 A. Yes.

2 Q. Now, after that was done what happened next?

3 A. Well, he had made a statement several times when I
4 wanted to see him again.

5 Q. Who is he?

6 THE COURT: Petronella?

7 THE WITNESS: Petronella.

8 BY MR. HILL:

9 Q. And you say several times, how many times is several?

10 A. Well, more than one time. And I think the last time
11 I, you know, he asked me did I want more and I said
12 I'll see.

13 Q. Now, you said --

14 A. Because I was -- well, actually I was, you know, I was
15 kind of surprised really.

16 Q. What were you surprised at?

17 A. Because he asked me did I want anymore stamps. Because
18 what this Gray fella told me that he had a thousand
19 dollars worth of stamps and that he was in trouble,
20 he was leaving town and, you know, I was -- that's the
21 only reason why I decided to , you know, purchase
22 them, you know.

23 Q. Then your response you said was "I'll see" or something
24 like that, is that right?

25 A. Right.

1 Q What was your purpose in giving that response?

2 A Well, he asked me more than one time, I just gave him
3 my answer, you know, I just answered, for no reason.

4 Q Did he mention any specific time about getting back
5 together again?

6 A No, he didn't.

7 Q Were you sitting here in the court room when the tapes
8 were being played?

9 A Yes.

10 Q And did you listen to those tapes?

11 A Yes, I did.

12 Q And did you listen to those tapes?

13 A Yes, I did.

14 Q Do you remember if he said anything in the first
15 conversation about seeing you on Monday?

16 A Yes, right. Right.

17 Q And what was your response to that?

18 A I said okay.

19 Q And what was your purpose in saying okay?

20 A I just said it.

21 Q And did you expect at that point that you would be
22 seeing him Monday?

23 A No, not really because - see, we work on different
24 jobs, call jobs, and I'm in and out all the time and
25 most of the time I'm out so I didn't expect to see him

1 anymore anyway.

2 Q Now, do you recall, by the way, what day of the week
3 February 25th, this first sale, took place on?

4 A Yes.

5 Q What day was it?

6 A It was Friday.

7 Q Now, the second sale according to the allegations took
8 place on the 28th which then was Monday, is that right?

9 A Right.

10 Q Now, between the 25th and the 28th did you have any
11 other contacts with Mr. Gray or Mr. Petronella?

12 A Gray came back.

13 Q Do you remember when?

14 A It was before the -- to be truthful about it, it was
15 before the next sale because Gray is the one that came
16 back and he asked me, you know, we went back in the
17 work room and, you know, I asked him what he wanted,
18 you know, I said, "You were leaving town.", you know, --

19 Q Keep your voice up, please.

20 A -- he said that they had some more stamps, I told
21 him I didn't need anymore stamps, and then he asked
22 me about the money and I said, "For what?", I said,
23 "I just gave you money.", he said he didn't give me
24 much money, I said, "Well, I don't have anything to
25 do with that.", and then he was telling me he's sick

1 and then he pulled back his shirt and showed me up
2 on his upper chest, shoulder, was a sore about as big
3 as my fingernail and he was showing it to me and --

4 Q What did he say about that?

5 A Well, he said he was - I said, you know, I suggested
6 he should go to a doctor and he said he would but he
7 didn't have any money and so I let him - at that time
8 I gave him fifty dollars.

9 Q Why?

10 A Well, he kept nagging at me that I got a buy on the
11 stamps and that this guy didn't give him - you know,
12 his partner gave him the shaft and he didn't give him
13 much money out of the deal, and, you know, this is
14 what he kept saying and finally he said they had
15 some more stamps and I told him I didn't want anymore,
16 I didn't need anymore, he said, "Maybe you have some
17 friends that need some.", I said, "Like what?", he
18 said, "Like three thousand dollars worth of stamps
19 for, you know, the same thing, nine hundred dollars.",
20 so I told him, "Well, I'll see.", you know, and then
21 he went on talking that his friend had a lot of
22 stamps, like he said if I could find someone that could
23 use twenty or thirty thousand dollars worth of stamps
24 and I said, "I don't know.", you know, I said, "I'll
25 see.", I said.

- 1 Q What was your purpose in saying "I'll see."?
- 2 A Well, I had to give him an answer because he was
- 3 talking to me, right, so I had to give him an answer
- 4 because I had - I had got involved in the first purchase
- 5 from him and now I got to give him an answer, he come
- 6 back in and he wanted fifty dollars and I gave him
- 7 that.
- 8 Q Now, how did that conversation finally end, what
- 9 finally happened?
- 10 A Well, he said that if I, you know, he'll be getting
- 11 in touch, you know, check with my friends to see if I
- 12 could use three thousand dollars worth of stamps and
- 13 by that time someone came to the door and called him,
- 14 a tall dark haired fella dressed real nice, so he came
- 15 out, when I came out he was standing near the doorway,
- 16 and so they left.
- 17 Q Now, by the way, what did you do with the stamps
- 18 from the first sale?
- 19 A Well, Myles had taken only two hundred dollars worth
- 20 of stamps and the rest I gave some to my sisters which
- 21 have - they have kids, I gave some to my mother and
- 22 to my cousin and I used them.
- 23 Q Now, after this conversation that you had with Gray
- 24 after the first sale when is the next time that you
- 25 heard from either Mr. Gray or Mr. Petronella?

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1 THE COURT: Excuse me.

2 Read that last question, please.

3
4 (Question read.)

5
6 THE COURT: You can answer it.

7 BY MR. HILL:

8 A After the first sale?

9 Q No. After this conversation that you told us about
10 with Mr. Gray?

11 A Well, it was Monday, early Monday.

12 Q And who did you hear from?

13 A Mr. Petronella.

14 Q And was that a phone conversation or in person,
15 a visit?

16 A We might have had a phone conversation. I really
17 couldn't remember, you know, I received so many
18 telephone calls, I didn't know I was supposed to keep
19 time, and you know.

20 Q What happened on that occasion?

21 A Mr. Petronella mentioned the three thousand dollars
22 of stamps and he asked me had I, you know, talked to,
23 you know, about getting the stamps.

24 Q And had you had any conversation with anyone?

25 A Yes. I - the fellow we purchase fish from every week,

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1 Mr. - well, I won't call his name.

2 Q No, tell us his name?

3 A Well, Mr. Lattimore, and I was up in his market and --

4 Q When were you there?

5 A Well, to purchase the fish.

6 Q When?

7 On Saturday.

8 Q The 29th, would that be the day after the first sale?

9 THE COURT: The 26th.

10 BY MR. HILL:

11 Q I'm sorry. The 26th?

12 A Right.

13 Q And how did the subject happen to come up?

14 A Well, I knew him pretty well and I was trading with
15 him a long time and I mentioned - we just started
16 talking and I just mentioned this, and then I mentioned
17 about this guy coming back, Gray, this Gray fella
18 coming back and saying he had some more stamps like
19 three thousand dollars he wanted to get rid of for
20 nine hundred dollars and he said he would take them.

21 Q Who said that?

22 A Mr. Lattimore.

23 Q All right. Did you get any money from Mr. Lattimore?

24 A No then, not right then, no.

25 Q When did you?

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1 A. Monday.

2 Q. The 28th?

3 A. Yes.

4 Q. And where did you get that money?

5 A. He - Mr. Lattimore brought it to me, he brought it
6 into the store to me.

7 Q. How much did he bring you?

8 A. He brought me six hundred dollars.

9 Q. And was that all the money that was used on this sale,
10 the second one?

11 A. No. There was nine hundred dollars used.

12 Q. Where did the other three come from?

13 A. It came from me.

14 Q. Now, on the 28th how many times did you see Mr.
15 Petronella?

16 A. It was two or three times.

17 Q. Was anyone else with him on that occasion?

18 THE COURT: On any of the occasions?

19 BY MR. HILL:

20 Q. On any of the occasions on the 28th?

21 A. Yes. This fellow Gray was with him and another fellow,
22 I never did know his name.

23 THE COURT: White or black?

24 THE WITNESS: Yes, black.

25 BY MR. HILL:

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1 Q Where did you see these two other fellows?

2 A One was sitting in the rear of the car and at the time
3 Gray was sitting in the front, in the passenger seat
4 in front.

5 MR. HILL: Your Honor, I'm looking for that
6 group of photos that was marked as
7 seven --

8 THE COURT: Check with Mr. Wagner.
9 Each party has his own exhibits.

10 BY MR. HILL:

11 Q Mr. Banks, I'm going to show you Government's Exhibit
12 10 in evidence and ask if you know what that's a
13 picture of?

14 A Yes, that's the picture of the car.

15 Q And do you see yourself in that picture?

16 A Walking behind Petronella.

17 Q All right.

18 A He was leading me out from the store to the back of
19 the car.

20 Q Can you see the other men including Mr. Gray that you
21 mentioned in that picture?

22 A Well, Gray had to be one of the fellas inside the car.

23 Q Can you see people inside the car in that picture?

24 A There's two shadows indicating two people in the car.

25 Q All right. After you got this money from Mr. Lattimore

- 1 on the 28th was there a time that Mr. Petronella was
2 supposed to be there at your store?
- 3 A. Yes, right, there was.
- 4 Q. What time was that?
- 5 A. Two o'clock.
- 6 Q. And did he appear at that time?
- 7 A. No, he didn't.
- 8 Q. And what did you do?
- 9 A. Well, I had to leave.
- 10 Q. Why?
- 11 A. Because, you see, we do - like I said, we do jobs and
12 some of it's scheduled at a time and I have to leave,
13 that's the reason why he was supposed to be there at
14 two o'clock.
- 15 Q. Now, what kind of jobs are you talking about?
- 16 A. Well, we do a lot of emergency jobs, we install glass,
17 locks, and we do plumbing.
- 18 Q. All right. What did you do with the money you had gotten
19 from Lattimore after Petronella didn't show at two
20 o'clock?
- 21 A. Well, I was going back up by Mr. Lattimore's store
22 so I dropped the money back off.
- 23 Q. Then did there come a time later on the 28th when you
24 saw Mr. Petronella?
- 25 A. Yes, when I - we came back from a job.

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1 Q And where did you see him?

2 A Parked in front of the store.

3 Q Did you have some conversation at that time?

4 A Yes, we did. Yes, I did. Well, when I started in
5 the store they called me. Actually Gray called.

6 Q And what did they say to you, what did Petronella
7 or Gray or whoever was speaking say to you and what
8 did you say back?

9 A Well, I went over to the car, you know, and I made a
10 statement, you know, what, you know, they messed me
11 up, but that wasn't the word I used then.

12 Q What word did you use then?

13 A What they screwed me up for.

14 Q What were you referring to?

15 A Well, the time that they had agreed to bring the
16 stamps.

17 Q You mean the two o'clock time?

18 A Right.

19 Q And what else did you say at that point?

20 A I asked about, you know, since they had come if they
21 could be there back in thirty minutes, to be back in
22 thirty minutes.

23 Q And what did they say or what did Petronella, Gray,
24 whoever it was talking, say?

25 A They said they could.

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1 Q And then did they leave?

2 A Yes.

3 Q And what did you do?

4 A I went back up to Mr. Lattimore and picked up the
5 money myself from Mr. Lattimore.

6 Q And then did they come back?

7 A Yes, they did.

8 Q And was the sale of three thousand dollars worth of
9 stamps for nine hundred dollars completed?

10 A Yes, it was.

11 Q And at that point did you have any further conversa-
12 tion concerning other stamps?

13 A May have.

14 Q Do you remember what it was?

15 A No.

16 Q What did you do with the stamps from that second
17 transaction?

18 A Well, Mr. Lattimore - I gave him - I had taken him
19 two thousand dollars worth of stamps, I kept a thousand.

20 Q What did you do with that thousand that you kept?

21 A I used them and I did the same thing as I did with
22 the first ones, I gave them to my cousin, my sister
23 and my brother.

24 Q Now, after that second sale did you have any further
25 contacts from either Mr. Gray or Mr. Petronella?

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1 A. With Mr. Petronella.

2 Q And was that in person or telephone call or what?

3 A A telephone call, if I can recall.

4 Q And what did he say to you and what did you say to him
5 in that telephone call?

6 A Well, he asked me could I get him some televisions
7 and some lamps and I told him I could get the televisions
8 but I don't, you know, the people I buy from at the
9 warehouse, they don't sell lamps.

10 Q And were any amounts mentioned?

11 A Well, he was interested in five.

12 Q In what?

13 A Five televisions.

14 Q And did he mention any amount of stamps?

15 A Yes, two thousand dollars worth of stamps.

16 Q As a result of that telephone call what did you do?

17 A Well, I didn't have the money myself to get the
18 stuff with so I then contacted Mr. Lattimore again
19 and asked him was he interested in it, you know, and
20 he said he was.

21 Q And what did he do?

22 A He gave me the money.

23 Q How much?

24 A He gave me five hundred dollars.

25 Q And what did you do?

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1 A. Well, the next day Petronella called to remind me
2 of it and which I was going out there anyway, you
3 know.

4 Q. Where is out there?

5 A. To the warehouse, it's about twenty miles, and so he
6 asked me what time, you know, approximately I would
7 be back and I told him late that evening, maybe four-
8 thirty, five o'clock.

9 Q. Well, when you went to the warehouse, what day did you
10 go to the warehouse on, was it before or after
11 or the same day the third sale took place?

12 A. The same day.

13 Q. And when you went out there --

14 A. When I went, you know, to purchase the televisions
15 they only had four but he wanted five, so I just
16 purchased four you know, the other items I had picked
17 up also.

18 Q. All right. Now, I'll show you Defendant's Exhibit
19 2 for identification and ask you if you can tell me
20 what that is?

21 A. This is a receipt that you get after purchasing
22 merchandise.

23 Q. Does that have anything to do with the television
24 sets that you told us about?

25 A. Yes, it does. This is where I purchased the television

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1 sets.

2 Q Can you see the T.V. sets on there?

3 A Yes. It's twelve inch, two of them, and nineteen
4 inch, two of them.

5 Q And what's the date on that?

6 A The date is --

7 Q Can you see it?

8 A The third month and the seventh day.

9 MR. HILL: Your Honor, I would like to offer
10 Defendant's Exhibit 2 into evidence.

11 MR. WAGNER: I have no objection to this,
12 your Honor.

13 THE COURT: All right. Defendant's Exhibit
14 2 received in evidence.

15
16 (Defendant's Exhibit Numbered
17 2 received in evidence.)

18
19 MR. HILL: Thank you, your Honor.

20 BY MR. HILL:

21 Q Mr. Banks, Defendant's Exhibit 2 reflects that the
22 price of these television sets was less than five
23 hundred dollars, is that correct?

24 A Right.

25 Q And yet you had gotten five hundred dollars from Mr.

1 Lattimore?

2 A. Right.

3 Q What did you do with the difference?

4 A. I gave it back to him.

5 Q How much approximately?

6 A. It was a hundred and some dollars.

7 Q Then did there come a time when these television
8 sets were given to Mr. Petronella?

9 A. Yes, there was.

10 Q When was that with relation to the time that you
11 bought them?

12 A. Well, I had been back in the store maybe ten or fifteen
13 minutes when he called again and I was told that he
14 had called several times while I was away.

15 Q All right. Just tell us what happened when he called
16 again?

17 A. He asked me did I have the televisions, I told him
18 yes.

19 Q And then what happened so far as this transaction
20 is concerned, what happened next?

21 A. He came to pick them up and when he come to pick them
22 up he was supposed to give me two thousand dollars
23 of stamps, right, because this is what I had told
24 Mr. Lattimore but he didn't. You know, he only gave
25 me a thousand forty so then, you know, I figured it's

- 1 okay with him because this is what I had told him.
- 2 Q All right. Now, what did you do with that thousand
- 3 and forty dollars worth of stamps?
- 4 A I gave Mr. Lattimore a thousand dollars worth of
- 5 stamps and a hundred and some dollars back and I
- 6 kept the forty dollars worth of stamps.
- 7 Q What did you do with the forty?
- 8 A I used them in the store, we used them in the store
- 9 for buying food in the store.
- 10 Q Speak up, please.
- 11 A We used them in the store for buying food in the
- 12 store.
- 13 Q What are you referring to?
- 14 A Well, like we use like milk to go in the coffee,
- 15 donuts, and cookies and whatever.
- 16 Q Now, the fourth sale involves, according to the
- 17 indictment, thirty thousand dollars worth of stamps
- 18 for nine thousand dollars in cash, where did the figure
- 19 thirty thousand dollars originate?
- 20 A From Gray.
- 21 Q At what point?
- 22 A The second visit that - when he came in the store.
- 23 That's where - he talked about it then.
- 24 Q Who brought it up?
- 25 A Gray did.

- 1 Q What did he say?
- 2 A Well, he said that he had a lot of stamps and asked,
3 you know, if my friends - any of my friends could use
4 twenty or thirty thousand dollars worth of stamps
5 and I said I'll see.
- 6 Q Had you mentioned this to Mr. Lattimore or anyone
7 else?
- 8 A Yes, I did.
- 9 Q Who did you mention it to?
- 10 A Mr. Lattimore.
- 11 Q And what was his response?
- 12 A He said he would take most of them.
- 13 Q Did he give you any money with respect to that fourth
14 transaction?
- 15 A Yes, he did.
- 16 Q How much?
- 17 A He gave me seventy-five hundred, he brought it to the
18 store.
- 19 Q And where did the other fifteen hundred dollars
20 come from?
- 21 A It came from me.
- 22 Q What was going to be done with the stamps from that
23 fourth sale, who was getting what?
- 24 A Well, he was going to get two-thirds of the stamps
25 and I was going to take one-third.

132

1 Q With that third, that ten thousand dollars worth of
2 stamps, what were you going to do with them?

3 A Well, I had several things in mind. I belong to a
4 community organization and we had discussed at one
5 time that we was going to give like a gift or something
6 to the community.

7 Q Did you discuss anything about food stamps in connec-
8 tion with that?

9 A No. This was my thought. Because we always contri-
10 bute to different things and I figured this is some-
11 thing that could be used for that.

12 Q All right. And were you planning on doing anything
13 else with any of those stamps?

14 A Well, besides use them, you know, myself.

15 Q Did you have any intention to sell any of them?

16 A No, I never have.

17 Q By the way, Mr. Banks, have you and your family received
18 food stamps - let's strike that. Did you get food
19 stamps otherwise during the blizzard of '77?

20 A Yes, we did.

21 Q And how many did you get, do you remember?

22 A My wife took care of that, I don't know. She take
23 care of all the paperwork concerning the store, I
24 never get involved.

25 Q Before the blizzard did your family ever receive food

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1 stamps?

2 A. Yes.

3 Q. When was that?

4 A. Approximately two and a half, three years ago.

5 Q. Why was t

6 A. Well, the business, you know, when it's slow you don't
7 take in the money to meet the bills and you owe
8 obligations and, of course, it takes money to run
9 a business, and my sole support was the store and
10 still is the store.

11 MR. HILL: Thank you, Mr. Banks.

12

13 CROSS EXAMINATION

14 BY MR. WAGNER:

15 Q. Mr. Banks, I have a few questions for you, sir.

16 First of all, you were present here, were you not,
17 sir, when the tapes were played?

18 A. Yes, I was.

19 Q. And as far as you could tell from your recollection
20 was the information on the tapes accurate with
21 respect to what occurred that day?

22 A. Not really.

23 Q. There was some differences?

24 A. I think so.

25 MR. HILL: Your Honor, I just object to the

1 DIRECT EXAMINATION

2 BY MR. HILL:

3 Q Mr. Wirt, do you know Glenn Banks?

4 A Right.

5 Q You in fact worked for Glenn Banks --

6 A Right.

7 Q -- at the Harris Hardware Store?

8 A Right.

9 Q How long had you worked there?

10 A About five or six years.

11 Q Now, going back to February 25th of 1977 were you
12 present at the Harris Hardware Store when Mr. Banks
13 purchased some food stamps?

14 A Yes, I was.

15 Q Now, do you know who he purchased the stamps from?

16 A I didn't know then, I know now.

17 Q All right. Do you know a name?

18 A The name, I can't think of names offhand but I know --

19 Q Have you see the man around the building here today?

20 A Yes.

21 Q Was it the man who was in the court room here before
22 with the beard?

23 A He had a green suit on, had a long beard.

24 Q I'm sorry, I didn't get that.

25 A That's the one.

- 1 Q All right. Now, did he come to Mr. Banks' store on
- 2 February 25th?
- 3 A Yes, he came, well, a colored guy came in first.
- 4 Q All right. Describe what happened when the colored
- 5 man came in?
- 6 A We had some discussions and so Mr. Banks --
- 7 Q Can you speak up a little bit?
- 8 A Mr. Banks was waiting on a customer and I had just
- 9 finished a customer and so he, Banks, told me to
- 10 wait on him, he said, "No. I want to talk to the
- 11 boss.", and I pointed out the boss.
- 12 Q All right. And did he wait for Mr. Banks to finish?
- 13 A Yes.
- 14 Q And then did you hear some conversation between the
- 15 two of them?
- 16 A Mr. Banks come around from behind the counter, he
- 17 asked him about stamps, and Mr. Banks said, "What
- 18 am I going to do with stamps?"
- 19 Q Slow down. Okay. You're getting a little fast.
- 20 Did you hear this colored man say something to Mr.
- 21 Banks?
- 22 A Right.
- 23 Q What did you hear him say?
- 24 A He asked about the stamps. Mr. Banks said, "What
- 25 am I going to do with those stamps? I don't need

1 no stamps.".

2 Q Sbw down.

3 A He asked him again, he said, "I don't need no stamps.",
4 and he said, "You haven't heard the deal yet.".

5 Q Wait a minute now. After that, he said, "You haven't
6 heard the deal yet.", who spoke next?

7 A That same colored dude.

8 Q All right. He's the one who's speaking. Now, who
9 said something next is what I would like to know?

10 A Banks said what was the deal, he said, "You give me
11 three hundred dollars, I'll give you a thousand.",
12 he said, "What's wrong with it?", he said, "You give
13 me a thou for three hundred? No, something must be
14 wrong.", he said, "No, I work at the place, we got
15 a lot of them.".

16 Q All right. Now, did you say something along in here?

17 A I said, "Oh, three hundred for a thousand", I said,
18 "I want some of that. I got a lot of nieces and
19 nephews I know who could use that for a hundred
20 dollars.", you know, and so he said, - he went out,
21 he said, "I'll be right back.".

22 Q Who said that?

23 A The colored dude.

24 Q All right.

25 A He come back and he come back with a white dude with

- 1 a fur coat on.
- 2 Q All right. Who was the white dude?
- 3 A The one that was here today.
- 4 Q The one that was here today, all right.
- 5 A The one with the big long beard.
- 6 Q Now, when he came back in with the white dude, as you
- 7 described him, with the fur coat on --
- 8 A Right.
- 9 Q -- what happened next?
- 10 A He stopped the colored guy by the door, he got inside
- 11 the door, he said, "What is this?", the colored guy
- 12 said, "Nothing wrong, he's my friend. Me and him
- 13 works together. Nothing wrong with him.", he asked
- 14 him, "Is it hot?", "No, nothing hot. The two men
- 15 got to go out of town and they need some money."
- 16 Q You're just going to have to slow down a bit.
- 17 A Anyway, he said, "They're not hot. They're good.
- 18 We works there. We got to get out of town, we need
- 19 some fast money.". He brought the stamps back in.
- 20 The guy had his arm up on the counter, he was shaking,
- 21 you know, he said, "What's wrong, why are you shaking?",
- 22 "There's nothing wrong.". He come and brought the
- 23 stamps, he gave him three hundred dollars and that
- 24 was it, and he walked out.
- 25 MR. HILL: Thank you.

1 THE COURT: Wait a minute, Mr. Wirt. Mr.
2 Wagner has some questions.

3
4 CROSS EXAMINATION

5 BY MR. WAGNER:

6 Q Mr. Wirt, do you live at 169 East Ferry Street?

7 A Right.

8 Q Do you know the address of Mr. Banks' Hardware Store?

9 A 169 Ferry.

10 Q You live upstairs, right?

11 A Right.

12 Q And what kind of work do you do there for him?

13 A I help him out in the business. I do things for him.

14 Q You would do anything for him that he wants?

15 A If I can do it.

16 Q I see. How long have you been working for him?

17 A About five or six years.

18 Q Do you have any other job?

19 A No. I'm on disability. I just help him around the
20 store, not working. A lot of times I go around in
21 the truck and pick up things.

22 Q Can I ask you if you can slow down just a little bit
23 so the jurors can hear you.

24 A Yes.

25 Q Now, you were in there on February 25, 1977?

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A. Right.

Q. And somebody came by and offered to sell Mr. Banks some food stamps, is that right?

A. Right.

Q. At a cut rate?

A. Right.

Q. And you mentioned, I think you did anyway, that you wanted a piece of the action, is that right?

A. After he said three hundred dollars for a thou I said yes, I said to myself three hundred dollars for a thou, I had a hundred dollars, I gave him a hundred dollars.

Q. Who did you give the hundred dollars to?

A. I gave it to Banks.

Q. To Mr. Banks?

A. Yes.

Q. And did he put some money of his own in, do you know?

A. Yes.

Q. How much did he put in?

A. It must have been two hundred dollars. It was three hundred dollars for a thou.

Q. And you got those thousand dollars in stamps?

A. Yes.

Q. Now, you knew that that was wrong?

A. No. I know at the time the stamps was selling - you know, giving them away, see, and he said he had them

- 1 left, they had too many and they were getting rid
- 2 of them where he works there.
- 3 Q Okay. That was a pretty good price, wasn't it, three
- 4 hundred dollars?
- 5 A For a thousand, yes.
- 6 Q For a thousand. How many of those stamps did you get?
- 7 A Two hundred dollars worth of stamps.
- 8 Q So your one hundred bought you two hundred?
- 9 A Right.
- 10 Q How many stamps did Mr. Banks get?
- 11 A He got the rest of them.
- 12 Q He got eight hundred dollars for his two hundred?
- 13 A Right.
- 14 Q He had a better deal than you did?
- 15 A Well, he got eight hundred.
- 16 Q Now, you mentioned something about wondering whether
- 17 they were hot?
- 18 A Yes.
- 19 Q You meant stolen, right?
- 20 A Yes, he asked that.
- 21 Q And do you know why he asked that?
- 22 A Yes, so he don't buy hot stuff, you know, He works
- 23 there, you know, you don't buy nothing like that,
- 24 the guy that works there, he said he had to go out
- 25 of town you know, who he worked for, he had too many

1 stamps.

2 Q This fella that came in was dressed in a long fur
3 coat?

4 A Yes.

5 Q He had a black beard?

6 A A beard, yes.

7 Q He was just wearing casual clothes, if you know?

8 A Casual, a big long coat, I don't know what kind. I
9 know he wasn't dressed like he was working. He looked
10 like a bum.

11 Q Could you say that again, please?

12 A He acted like a bum to me.

13 Q He looked like a bum?

14 A He did to me.

15 Q You didn't think he was in any way representative
16 of the Social Services Department?

17 A Like I say, he had a big coat, I couldn't tell. That
18 coat, you know, he had boots that come up to the coat,
19 that's all I could say. Like he was wearing his -
20 you know, his face looked like he needed a shave.

21 Q Did you at first wonder if those stamps might have
22 been hot?

23 A At first I wasn't -- he said he was working --

24 MR. HILL: Objection, your Honor.

25 THE COURT: Overruled.

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1 BY MR. WAGNER:

2 A. I know there was a lot of stuff in the City, you know,
3 giving away, and he said he was working for the people
4 and they were giving them away, and he said he had to
5 go out of town, the guy, he needed the money, and
6 he wanted to get rid of them, and you know, I can
7 use them.

8 Q. I take it, sir, when he first came in you were
9 concerned that they might be stolen stamps?

10 A. At first I wasn't paying no mind. When they guy
11 said it was a deal Mr. Banks says, "What's wrong with
12 them, three hundred for a thou?", he says, "I works
13 there.", you know.

14 Q. He said he works where?

15 A. Where they give the stamps. He says, "I'm going out
16 of town. You give me three hundred for a thousand.
17 You can't get a deal like that nowhere."

18 Q. That was a pretty good deal, wasn't it?

19 A. It sure were.

20 And if you were assured by him that they weren't
21 stolen you were willing to take a chance?

22 A. A deal like that, and he said they were right, we
23 asked him, he said they were right. He had to be
24 lying, not me. I take the man at his word.

25 Q. Okay. Were you ever in Mr. Banks' store again when

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1 the fellow came back?

2 A. What?

3 Q. Were you ever in Mr. Banks' store again when this
4 fellow came back?

5 A. Yes. The colored man come back for fifty dollars
6 without the white guy --

7 MR. HILL: Just a minute.

8 Your Honor, what I direct
9 examined on were the matters of the
10 25th. Now counsel is getting into
11 other occasions which is outside the
12 scope of cross examination.

13 THE COURT: It is all right. I will allow
14 it.

15 BY MR. WAGNER:

16 Q. Now, Mr. Wirt, if you can recall, did you ever see
17 that fellow with the beard and the fur coat in the
18 hardware store again?

19 A. Yes.

20 Q. When was that?

21 A. I don't recall the date.

22 Q. Was it within a few days of that first time?

23 A. It was a few but I don't recall now the date.

24 Q. Was it still --

25 A. I know he called sometime. He called me three times.

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- 1 He called Harris, was Harris there, I said, "No. He's
- 2 out on a job.". He called me three times.
- 3 Q What did you do with those food stamps you got?
- 4 A I used those, I got a lot of nephews and nieces and
- 5 I gave my nieces and nephews some. They got a lot
- 6 of kids and they could use them.
- 7 Q This fellow that came in first, this black man, how
- 8 long was he in the store?
- 9 A About five minutes. It wasn't over five minutes.
- 10 Q Less than that. How long did he have to wait before
- 11 he could see Mr. Banks?
- 12 A Until a customer left, two or three minutes.
- 13 Q So he had to wait about two or three minutes you would
- 14 say?
- 15 A If it was that long.
- 16 Q I'm sorry?
- 17 A If it was that long.
- 18 Q How long was he in the store total?
- 19 A I would say five, no longer than seven.
- 20 Q When he first came in you and Mr. Banks were both
- 21 dealing with customers, right?
- 22 A No. I had just finished with a customer. Mr. Banks
- 23 was waiting on a customer and he told me to wait on
- 24 him and I said, "Can I help you?", he said, "I want
- 25 to see the boss.".

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Q How long did he wait to see Mr. Banks?

A I think about two or three minutes at the most.

Q So he was only with Mr. Banks about three minutes?

A Yes. It was five or six minutes the whole time he was there.

Q The whole time from when he first came in to when he went out?

A Yes.

Q And then another fella came in with the beard?

A Yes.

Q And how long was the fella with the beard in there?

A About two or three minutes.

Q Just a real short time?

A A short time.

Q I guess I haven't got any other questions for you.

Thank you.

THE COURT: Thank you.

(Witness excused.)

MR. HILL: I call Arthur Boyd.

A R T H U R L E E B O Y D (545 Masten, Buffalo, New York), a Witness called by and in behalf of the Defendant, having been first duly sworn, was examined

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1 THE COURT: I will ask the Jury to step into
2 my hallway.

3
4 (Jury escorted from the court
5 room.)

6
7 THE COURT: All right, Mr. Hill.

8 MR. HILL: Your Honor, at this time the
9 defense moves for a directed verdict
10 of acquittal. First of all, the
11 evidence is insufficient to sustain
12 a conviction. Secondly, I believe
13 that the evidence establishes entrap-
14 ment as a matter of law. I think that
15 the fact of inducement, the inducement
16 element of entrapment is quite clear.
17 There is no dispute that these sales
18 were brought about by the intervention
19 of the special employee of the Erie
20 County Sheriffs Department Mr. Gray,
21 and I think we have in that respect
22 a continuing series of transactions
23 that are all tainted by that initial
24 inducement, and as far as the second
25 element of entrapment goes, propensity

1 or predisposition, I don't believe the
2 Government has presented any evidence
3 on that point that would establish
4 predisposition beyond a reasonable
5 doubt. There is a huge gap in the
6 evidence here between what went on
7 between the time that Mr. Gray first
8 talked to Mr. Banks and the time that
9 Mr. Petronella sold him the food
10 stamps. Any kind of a lack of propen-
11 sity or a lack of predisposition could
12 have easily been overcome by Mr. Gray
13 in that time. Once again, the burden
14 is on the Government to prove that
15 Mr. Banks was predisposed, and I assume
16 what they're going to rely on was that
17 he readily acquiesced to Mr. Gray's
18 approach for the purchase of food
19 stamps but there is a complete lack
20 of evidence as to ready acquiescence.
21 I suppose that the U. S. Attorney might
22 argue that Gray was just in there for
23 a couple of minutes but anything could
24 have happened within that couple of
25 minutes. Finally, I think that the

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1 evidence at this point also establishes
2 a violation of Mr. Banks' rights under
3 the Fourth, Fifth and Ninth Amendment
4 of the Constitution. I don't think
5 that there's been any showing at all
6 that there was any Constitutionally
7 cognizable basis upon which the Sheriffs
8 Department acted in intruding upon Mr.
9 Banks and invading his rights under
10 those amendments and I think that in
11 and of itself should warrant --

12 THE COURT:

Are you talking about an arrest
13 or what?

14 MR. HILL:

Pardon, your Honor?

15 THE COURT:

What are you talking about?

16 MR. HILL:

I'm talking about the initial
17 intrusion when Mr. Gray was sicked
18 or sent in - sicked upon and went in
19 to see Mr. Banks, that I maintain was
20 a police intrusion, that they had no
21 business, no rational constitutional
22 basis for making and I think that in
23 and of itself should warrant a directed
24 verdict of acquittal and suppression
25 of the evidence so I am including that

1 in my motion.

2 MR. WAGNER:

Your Honor, briefly I would like
3 to respond to that. First of all, --

4 THE COURT:

Wait a minute. I might want
5 something, I may not.

6 I will deny the motion which is
7 made on the basis of the failure of
8 proof generally and the motion based
9 upon the alleged violation of Mr.
10 Banks' constitutional rights.

11 Now, I will listen to whatever you
12 have to say relative to the entrapment
13 issue.

14 MR. WAGNER:

Thank you, your Honor.

15 Briefly I would say merely that
16 the law is clear, as you and Mr. Hill
17 both know Government inducement is
18 not a sufficient basis alone for
19 finding entrapment as a matter of law
20 which would result in a dismissal of
21 an indictment. I can see that the
22 agents approached the Defendant first
23 by themselves or through their agents,
24 informants, but it is our opinion that
25 the evidence is sufficient to go to the

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Jury on the fact that Mr. Banks was clearly predisposed to commit the crime.

THE COURT: What do you say in the evidence shows that he was clearly predisposed?

MR. WAGNER: First of all, I would suggest, your Honor, that the conversations that we have from the tapes, and I'm referring to the transcript only to help my recollection, shows that Mr. Banks engaged in the transactions with Mr. Petronella without resistance. There does not appear by him to be any resistance on that and yet we're talking about him spending hundreds of dollars for food stamps which I think the Jury can infer one knows our legal commodities are purchased in that manner. So that the basic fact that he does not oppose it or does not offer the slightest resistance indicates that he is going along voluntarily. The tape indicates a bargain by them so far as price, he's not an unwitting victim here of some

1 kind of a scheme. He's bargaining
2 price intelligently, knowledgeably
3 with Mr. Petronella and they agree on
4 a price and the transaction, the first
5 one was consummated, --

6 THE COURT:

The first one he does not bargain
7 with Mr. Petronella, Detective Petronella.
8 According to the conversation the price,
9 namely three hundred dollars for one
10 thousand dollars worth of food stamps,
11 is already set up by the time Gray has
12 signaled to Petronella to come into the
13 store. On the tape Gray tells Petronella
14 that this is the deal.

15 MR. WAGNER:

Well, even that being the case,
16 your Honor, it seems to me that the
17 facts as we have them now show that
18 Mr. Banks did not resist this offer
19 of Mr. Petronella to hand over money
20 for stamps.

21 THE COURT:

Are you saying that the Government
22 satisfies the burden of showing pre-
23 disposition if it shows there was no
24 resistance?

25 MR. WAGNER:

I think the answer to that is yes

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1 for a motion for acquittal. A Jury
2 might not find that but I think as a
3 matter of - it is not as a matter of
4 law a deficiency.

5 THE COURT:

What you are saying is if the
6 Jury finds there is no resistance
7 that that carries the burden for the
8 Government showing predisposition?

9 MR. WAGNER:

I would suggest that on the
10 facts of our case if there were only
11 one count of the first transaction
12 and the Jury convicted the man the
13 evidence that there was no resistance
14 would be sufficient to sustain a
15 conviction, I would suggest that.
16 Now, I don't have a case on that.

17 THE COURT:

I was just thinking in my mind
18 I don't know that I have ever read
19 a case to that affect.

20 MR. WAGNER:

Well, it would seem to me that
21 the facts of the transaction is that
22 Mr. Banks is talking to Mr. Petronella
23 where they are discussing where they're
24 going to do it, are there going to be
25 any changes, Mr. Banks and Mr.

1 Petronella I should correctly say may
2 not bargain price but they certainly
3 talk about it, that's what he told me,
4 a thousand, by Banks, Petronella says,
5 yeah, here's a thousand, check 'em
6 if you want. I submit he goes along
7 voluntarily with that. It shows
8 compliance and complicity with the
9 action rather than resistance or
10 hesitation. I would suggest there's
11 not a scintilla of evidence in the
12 first transcript of the first tape
13 which would show anything other than a
14 predisposition. There's nothing to
15 show that he had a will otherwise that
16 was overcome. He does not chase Mr.
17 Petronella out. He has friends there.
18 If the argument were made that he was
19 being forced or somehow were pressured,
20 he has his friends there, his comrades
21 with him in the store. It's also the
22 case as Mr. Petronella mentioned that
23 he didn't even know Mr. Banks, he
24 didn't know his name at that time.
25 Here a total stranger is getting

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1 together in the Defendant's place of
2 business with the Defendant's friends
3 around and he's engaging in this
4 transaction with Mr. Petronella. I
5 suggest --

6 THE COURT:

Now, Mr. Gray and Mr. Banks were
7 the only two in on the initiating
8 phase of the conversation. For
9 instance, we have the testimony of
10 neither of them at this point. Where
11 is Mr. Gray?

12 MR. WAGNER:

Well, your Honor, I have asked
13 the agents to get Mr. Gray. He has
14 been available to us in the past but
15 he's a citizen, he has a nomadic life
16 because of his background and his --

17 THE COURT:

It can't be too nomadic, he is
18 on lifetime probation.

19 MR. WAGNER:

Well, let's put it this way,
20 he does not have a phone, to the best
21 of my knowledge, he may but I don't
22 know if he does, and my way of obtain-
23 ing him before has been to tell the
24 agents to try and find him and they
25 have done that. I have told them

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earlier this week, I can't recall what day, the trial would be going, to try to fine Mr. Gray. I know they specifically made an effort to find him yesterday morning and they could not. I could put witnesses on if you would like for that.

THE COURT: Of course, you recognize the record is completely empty as far as any such showing.

MR. WAGNER: I realize at this time it is, your Honor.

THE COURT: Yes.

MR. WAGNER: I asked them again today this morning I sent a message to Mr. Costantino to again try to find Mr. Gray to have him available. It's our plan not to call Mr. Gray as a witness or Mr. Riley who I think would be irrelevant.

THE COURT: This is a different situation than the Jones case where although you did with Mr. Riley play it that way and I allowed you to do it. The problem here is, of course, Mr. Gray

1 is more of an actor and particularly
2 as regards the so called defense of
3 entrapment is one of the key actors.

4 MR. WAGNER: Well, I would suggest, your
5 Honor, -- First of all, I'm prepared
6 to rest my case without calling Mr.
7 Gray as I have done.

8 THE COURT: You have rested?

9 MR. WAGNER: I have rested.

10 THE COURT: That is right.

11 MR. WAGNER: And I still feel that's the
12 right position to take. I do not
13 think that entrapment has been made
14 out here as a matter of law which
15 would require the case not being
16 submitted to the Jury. I just don't
17 follow that logic. I heard Mr. Hill's
18 words but I don't follow the logic
19 there.

20 THE COURT: I can tell you the Jury will not
21 be instructed that it will be a
22 sufficient putting aside of the
23 defense of entrapment if they find
24 merely that Mr. Banks did not resist.

25 MR. WAGNER: Well, I wouldn't ask for that

1 instruction but I'm saying that if
2 the Jury convicted the Defendant
3 Mr. Banks on just this one count,
4 we're only on the first count yet,
5 I think the evidence of the tape
6 and the evidence from Mr. Petronella
7 is sufficient to show that there was
8 no - that there was a predisposition.
9 But if I might go on, your Honor, it
10 seems to me we're not simply dealing
11 with one count, we're dealing with
12 four counts here and they must be
13 viewed in their totality as bearing
14 on Mr. Banks' knowledge and intent
15 and motive and that is his predisposi-
16 tion.

17 THE COURT:

But he couldn't insofar as putting
18 aside the defense of entrapment as to
19 transactions two, three or four build
20 your house upon a prior event which
21 has been brought about by entrapment?

22 MR. WAGNER:

Are you asking me or are you
23 telling me that's --

24 THE COURT:

There is a question mark at the
25 end of that.

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1 MR. WAGNER:

2 My answer to that is that I do
3 not adhere to that theory. It seems
4 to me that, well, perhaps the
5 Defendant can make a vigorous argument
6 that the remaining counts should fall
7 because the foundation count was entrap-
8 ment in this case.

9 THE COURT:

10 You can't take event number 1,
11 if there was entrapment in event
12 number 1, transaction number 1, you
13 can't look to event number 2, 3 or 4
14 intalking about 2, 3 or 4 and say,
15 well, there was event number 1 which
16 showed predisposition because look,
17 he did it before.

18 MR. WAGNER:

19 Well, I respectfully disagree,
20 your Honor. I think, first of all,
21 that you can - I suppose if one's
22 mind finds as a matter of fact or
23 law that there is entrapment in count
24 1 or event 1 then that changes it but --

25 THE COURT:

What would the rest of the
hypothesis be?

MR. WAGNER:

Hypothesizing -- Can I change
the hypothesis for a minute?

1 THE COURT: Yes.

2 MR. WAGNER: Let us presume that we don't
3 know whether there's entrapment in
4 count 1, that's what we're arguing
5 about, that's the dispute. You the
6 Judge have not made your decision or
7 if it goes to the Jury they don't know
8 yet, they're puzzled, they're troubled
9 by it, so they ask themselves, well,
10 what else can we look at to find out,
11 we can't look inside his mind, --

12 THE COURT: There is no problem.

13 MR. WAGNER: -- we look at the other counts.

14 THE COURT: If it is an open question of
15 fact as to whether or not there is
16 entrapment as to event 1 you can
17 certainly look at future or later
18 acts as well as prior situations to
19 decide that issue but that is a
20 completely different hypothesis.

21 MR. WAGNER: Well, I suppose you can --

22 THE COURT: I get back to my hypothesis
23 though that if you do take a situation
24 where there was entrapment as to
25 event 1, you cannot in event 2 say

1 obviously there can be no entrapment
2 because he earlier had shown a pre-
3 disposition to do it, namely he
4 entered into event 1.

5 MR. WAGNER:

Well, I would suggest, your
6 Honor, that if Count I were somehow
7 by you or by the Jury to be thrown
8 out if there's a motion for acquittal
9 or a Jury's verdict of acquittal,
10 they could, however, say, well, I'm
11 using kind of a slang phrase, Mr.
12 Banks was entrapped in the first case
13 but - so we shouldn't convict him on
14 that but he got it in his blood, he
15 got hooked, he got hooked on the crime,
16 he didn't know he was going to go to
17 jail when he did the first occurrence,
18 that he was going to get caught, he
19 would have stopped obviously. By the
20 time he got hooked on it he was entrapped
21 on the first one but now he is - he is
22 on it, he is hooked on this fast buck.

23 THE COURT:

That is a very good term to use,
24 hooked, not predisposed but hooked on
25 it, caught up, made to be predisposed

1 to it by the prior acts of the
2 Government.

3 MR. WAGNER:

4 Well, I would argue, your Honor,
5 the word I used hooked has a connotation
6 that we sometimes in the drug world
7 which is a little unfair because that
8 word somehow implies a physiological
9 factor that the man couldn't control.
10 Mr. Banks was not, I would submit,
11 and there's no evidence or reason to
12 conclude that he had a craving to buy
13 food stamps and the he just couldn't
14 control himself and that he had a
15 choice of checking himself into a
16 food stamp methedone clinic or going
17 to a hospital, that's not the case
18 here, it's not like drugs where the
19 man - where his will and body are
20 really overcome. This man here had
21 no obligation or no compulsion to buy
22 food stamps again the second time
23 other than perhaps he wanted greed,
24 I would suggest, which I think is
25 permissible to convict a man.

THE COURT:

But the analogy isn't good because

1 the Government does not have to show
2 adiction, it only has to show predisposi-
3 tion --

4 MR. WAGNER: That's right.

5 THE COURT: -- or complete willingness.

6 MR. WAGNER: And I think that when a man takes
7 nine thousand dollars out of his pocket
8 and buys thirty thousand dollars in
9 food stamps, I think the inference
10 that the Jury can very properly make
11 is that regardless of what happened
12 back there a few days earlier, here is
13 a man who has greed in his heart and
14 who is so willing and is so predisposed
15 to do it that he was prepared --

16 THE COURT: Aren't we all greedy?

17 MR. WAGNER: Well, I suppose that there is a
18 distinction between being greedy and
19 acting criminally because of it and
20 I think that our society punishes those
21 who act greedy and tolerates those who
22 don't, and we're asking Mr. Banks to
23 control those natural urges and conform
24 to some very reasonable social structure
25 here which he has not done, and I think

1 the Jury will find that he has not
2 done that. Greed in their hearts
3 are notwithstanding it. So I would
4 respectfully oppose Mr. Hill's motion
5 to dismiss, motion for acquittal at
6 this time.

7 THE COURT:

8 All right. I am going to deny
9 the motion but the basis for a denial
10 is that the Jury is entitled to
11 consult their recollection of what is
12 in the conversation between Mr. Banks
13 and Mr. Petronella on the 25th day of
14 February 1977 and see whether in the
15 whole latitude and words and the
16 actions there could be found some
17 predisposition and willingness on the
18 part of Mr. Banks to enter into this,
19 and if from that they are not able to
20 determine the matter yes or no they
21 can make whatever use they think
22 proper of later events, taping of
23 events of February 28th and March 7th
24 and/or March 11th to decide whether
25 or not there was that willingness or
predisposition. As far as the witness

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1 Gray is concerned who obviously would
2 be quite a pertinent witness insofar
3 as the initial conversation with Mr.
4 Banks concerning this matter, of
5 course, there is at this time no
6 showing that this witness is peculiarly
7 within the control of the Government,
8 so at this point I would not even
9 give the Jury the absent witness instruc-
10 tion. I may change, however, by the
11 time we reach that point. I will
12 deny the motion and go on with the
13 case at this point.

14 MR. HILL:

May I check and see who I have
got sitting out here?

16 THE COURT:

Certainly.

17 Bring the Jury back.

18
19 (Jury present.)

21 THE COURT:

22 All right. We are at this point
23 where we shall see whether or not Mr.
24 Banks through Mr. Hill intends to put
25 in any evidence. He has indicated
he does have that intention.

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MOTION FOR DIRECTED VERDICT OF ACQUITTAL

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1 MR. WAGNER: That's correct, your Honor.

2 THE COURT: All right.

3 Ladies and gentlemen, I will
4 excuse you for ten or fifteen minutes,
5 you may go downstairs.

6
7 (Jury escorted from the court
8 room.)

9
10 THE COURT: Mr. Hill, I assume you are renew-
11 ing your motions?

12 MR. HILL: Yes, your Honor. I think, one
13 perhaps ground that I didn't really
14 specify at the end of the prosecution's
15 case, in reviewing the motions. I also
16 add a motion for a directed verdict of
17 acquittal based on again entrapment
18 as a matter of law by going to the
19 other theory of entrapment that a
20 number of cases mentioned. I mentioned
21 in my requested charge the idea of
22 entrapment based upon unfair or un-
23 conscionable police conduct. I think
24 that the --

25 THE COURT: Let me ask you about that because

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1 I did notice that in your request of
2 instruction and I indicated that I
3 was not going to give that instruction,
4 what is there in the evidence of the
5 case that there is any foundation for
6 police misconduct?

7 MR. HILL:

Well, I think, of course, what
8 there is, your Honor, is what's lacking.
9 Again, it appears from the evidence
10 to be a case wherein the police simply
11 picked Mr. Banks out of the blue
12 and went after him without any grounds
13 for suspecting he might be like in
14 the drug cases usually when they go
15 after somebody they have some basis
16 for suspecting he's a pusher, it
17 appears somewhere in the record of
18 those cases. There doesn't seem to
19 be anything like that in this case.
20 It looks like they picked him off the
21 wall and went after him and enticed
22 him, followed up on that enticement,
23 I think that's what makes this case
24 different from at least the cases
25 I've read or the ones I read that I

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1 recall there wasn't any basis for
2 picking on this man. I don't think
3 the police should be able to do that.
4 I don't think that's fair at all. If
5 not constitutional at least it isn't
6 fair or conscionable. And particularly
7 considering the circumstances that
8 had happened in terribly hard times
9 that we had in this community when I
10 think the resistance of all of us was
11 low to this sort of approach.

12 THE COURT:

Well, of course, you do have Mr.
13 Petronella indicating that it had been
14 Mr. Gray who directed Mr. Petronella
15 to the Harris Hardware Store and, you
16 know, and he was working with Gray and
17 Riley. He indicated that he had come
18 to rely upon them and found them depend-
19 able in the respective six months
20 that he had worked with each of them.

21 MR. HILL:

Your Honor, I objected to --

22 THE COURT:

Now, here is not, I admit, what
23 you usually find where working with
24 an informant the informant says to
25 Mr. Petronella or the agent in the

1 office the word on the street is or
2 I know that this is so, that John
3 Jones is dealing in heroin, and so
4 forth, and so forth, and on the basis
5 of that they would follow it up by
6 making an undercover approach to
7 John Jones. Here they are in a
8 concentrated period of working on this
9 one program with Mr. Shortall here in
10 town and Mr. Riley and Mr. Gray being
11 the on-the-scene lead dog, so to
12 speak, and subject to that variation
13 I don't see that we have any different
14 type of case.

15 MR. HILL:

Well, your Honor, I don't really
16 recall any competent evidence in the
17 record to show that this is that kind
18 of a situation. I think on cross
19 examination Mr. Petronella began to
20 volunteer some information about
21 reliability to which I immediately
22 objected. I think that the testimony
23 stopped at that point and what I did
24 was rephrase my question. I don't
25 think there is any competent proof

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1 of reliability of these fellas,
2 particularly Gray, or them giving Mr.
3 Petronella any specific sort of
4 information about Mr. Banks, anything
5 of that sort. Of course, that would
6 have been a proper question to go in
7 on the suppression motion I brought
8 if a hearing had been granted but I
9 don't think that it was - it was either
10 proper to bring it into the trial or
11 that it was brought in properly or
12 improperly, I don't think it was there.

13 THE COURT:

Now, my recollection and notes
14 concerning the testimony indicated,
15 as I said that I reiterate, and I find
16 in that variation of the usual way of
17 working with informants but one that
18 is different in degree rather than
19 of kind and even to the extent that
20 it may be a difference of time nothing
21 that would have me instructing the
22 Jury or ruling as a matter of law that
23 this is police misconduct. Leaving
24 aside the very inviting question as to
25 whether someone making a general

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1 investigation could accost individuals
2 A, B, and C just as he found them
3 walking along the street, I don't
4 find that situation here, and I will
5 deny your motion. I will deny your
6 renewal of the other motions.

7 MR. HILL: Thank you, your Honor.

8 I have my exception?

9 THE COURT: Yes, of course.

10 MR. HILL: I assume I have my exception.

11 THE COURT: Yes, of course you do.

12 Now, on your request for instruc-
13 tions, the Government has given me
14 three requests, and number 1 is included
15 in substance.

16 MR. HILL: Your Honor, what I did do, are
17 you referring to my request?

18 THE COURT: No. I am referring to the Govern-
19 ment's.

20 MR. HILL: I'm sorry.

21 THE COURT: Government Number 1 is in sub-
22 stance. Number 2 in substance. You
23 will find that the last two and a piece
24 of the pages there, approximately the
25 last two pages take off from the footnote

EXCERPT FROM APPELLANT'S OPENING STATEMENT
FRAMING ENTRAPMENT ISSUE

14

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1 about the purpose of an opening state-
2 ment. The most important thing as
3 Judge Elfvin said is that an opening
4 statement is not evidence. What Mr.
5 Wagner just told you isn't evidence
6 and what I'm about to tell you isn't
7 evidence. What it is is a general
8 kind of an outline of what each of us
9 thinks the facts in the case will be.
10 It's kind of a statement of intent on
11 Mr. Wagner's part, what he intends to
12 prove. Sometimes it's said that an
13 opening statement is like a table of
14 contents to a book. You can kind of
15 run down the list of things that are
16 listed in the table of contents and
17 get an idea of what's going to come in
18 the book. The problem is that you
19 don't know whether the book is a good
20 book or a bad book until you have read
21 the whole thing. [At the outset when
22 we were selecting the jury I told you
23 one thing that will not be an issue,
24 namely that Mr. Banks was involved in
25 the transactions alleged in the indictment.

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1 There is no question in this case that
2 Glenn Banks bought food stamps from
3 Joseph Petronella on four separate
4 occasions as alleged in the indictment.
5 However, there is much more to the
6 case than that and that's what I would
7 like to give you a preview of now. If
8 there weren't a lot more to the case
9 then that, we wouldn't be here this
10 morning. There's an issue in this
11 case, a solid and genuine issue that
12 we contend should be submitted for your
13 decision. The issue is, again as I
14 have mentioned a bit about on jury
15 selection, the issue is was Mr. Banks
16 entrapped into purchasing these food
17 stamps or to put it another way did
18 the Sheriffs Department undercover
19 people induce Mr. Banks to buy the
20 food stamps and would he not have
21 otherwise been predisposed to do so.
22 The Judge will tell you more about the
23 law on that point at the end of the
24 case but that's the issue in the case
25 as the defense sees it.] All right.

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EXCERPT FROM COURT'S CHARGE
FRAMING ENTRAPMENT
ISSUE

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1 witnesses or producing any evidence.

2 Now, he has produced some as you know.

3 [There is a fifth element that must be
4 proven in this case and this burden
5 also falls upon the Government, namely
6 that the Defendant Mr. Banks was not
7 entrapped into a commission of this
8 crime. You know from the arguments
9 of counsel that each of them considers
10 that to be the issue that you must
11 decide as to each of these events.]

12 Now, the statute and the elements
13 use the term knowingly, and I tell you
14 that an act is done knowingly if it is
15 done voluntarily and intentionally and
16 not because of mistake or accident or
17 other innocent reason, and the purpose
18 of adding the word knowingly is to
19 be sure no one would be convicted of
20 a crime because of an act done pursuant
21 to mistake or accident or other innocent
22 reason. Now, this Food Stamp Act of
23 1964 has other pertinent provisions.
24 Section 2015(a) says that coupons
25 shall be issued only to households which

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EXCERPT FROM COURT'S CHARGE ON ENTRAPMENT
IN SERIES OF TRANSACTIONS

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1 induced the Defendant to commit this
2 crime the Government must prove beyond
3 a reasonable doubt that the inducement
4 was not the cause of the crime, that
5 is that the Defendant was ready and
6 willing to commit the crime having
7 the opportunity. You must resolve the
8 issue of entrapment separately as to
9 each transaction. [Now, obviously
10 there is a factual relationship among
11 the four transactions. If you find
12 that the Government has failed to prove
13 beyond a reasonable doubt that there
14 was no entrapment on February 25th
15 you can, if you want, infer such failure
16 to the transactions occurring on
17 February 28th, March 7, and March 11.
18 Obviously the key event insofar as
19 entrapment is concerned is the February
20 25 transaction and how it came about.
21 You might infer that the other events
22 are not as significant. You might
23 decide that the Defendant only engaged
24 in deals on February 28, March 7 and
25 March 11 because he has been induced

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1 into the February 25 transaction and
2 not that he had been ready and willing
3 before February 25 to deal illegally
4 in food stamps. Such willingness and
5 readiness is the key issue you must
6 determine. You may decide that the
7 events of February 28 or March 7 or
8 March 11 are helpful to your determina-
9 tion whether Defendant had been ready
10 and willing before February 25, the
11 date of the first transaction.] Now,
12 I stress again that you are to find
13 the facts. Examples or factual indica-
14 tions that I have given do not indicate
15 any opinion on my part as to how you
16 should find on any issue of fact or
17 whether you should acquit or convict
18 the Defendant. These matters are
19 solely for your decision and I have
20 no part in making that decision other
21 than to tell you, as I have, what
22 the governing law is. Now, I remind
23 you that at the time you started this
24 case you took an oath as members of
25 the jury and you said you would well

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COURT'S SUPPLEMENTAL CHARGE ON ENTRAPMENT
IN SERIES OF TRANSACTIONS

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1 PROCEEDINGS: September 20, 1977, 3:47 p.m.

2 APPEARANCES: As before noted.

3
4 (Defendant present.)

5
6 (Jury present.)

7
8 THE COURT: Who is speaking for the Jury?

9 THE FOREMAN (JUROR NO. 12): I am.

10 THE COURT: I have a request to ask me a
11 question.

12 THE FOREMAN: Right. The panel would like to
13 know how, in what manner a conviction
14 on the First Count would affect the
15 other three, if any?

16 THE COURT: Well, each one as I indicated
17 to you would be dealt with separately.
18 You have to come to a determination
19 as to each count finding or not finding
20 the proof of the elements that I gave
21 you as to each count. Now, beyond
22 that it has no affect at all. Obviously
23 the facts that you heard shows inter-
24 relationship but, nevertheless, each
25 one would be independently determined

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1 as to whether Mr. Banks was guilty
2 or not guilty. I gave the Jury some
3 considerations as to the factor of
4 readiness and willingness, the factor
5 of inducement might come into that
6 picture, is that part of your problem?

7 THE FOREMAN: Yes, yes, that is part of the
8 problem.

9 THE COURT: It really becomes a factual
10 consideration. You have to determine
11 once there is evidence, some evidence
12 as there is in this case and as Mr.
13 Wagner admits there is some evidence
14 of inducement of active initiation
15 by the Government, then you have to
16 determine whether or not Mr. Wagner
17 has proved beyond a reasonable doubt
18 either that the inducement had with
19 no substantive part of the criminality
20 or that even if it was Mr. Banks prior
21 to that was ready and willing to do
22 this type of criminal act if he had
23 the opportunity. Now, this is a factual
24 determination. If you make a determina-
25 tion that involves that as to one count

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1 you still have to separately make it
2 as to the other but obviously it cuts
3 both ways. You might if you did find,
4 for example, that he had been ready
5 and willing to carry out the deal of
6 February 25 which is Count Number 1
7 you might say that he obviously then
8 was ready and willing to carry out
9 any subsequent one because readiness
10 and willingness has to exist before
11 the event, before the Government comes
12 into the picture. You could, if you
13 in determining whether or not Mr.
14 Banks was ready and willing to enter
15 into any of the deals, say on February
16 28 you could consider what happened
17 on the other deals in trying to give
18 you some appraisal of his intent of
19 his state of mind of his readiness
20 or unreadiness or willingness or unwill-
21 ingness, you put it all together and
22 bring it to bear upon the particular
23 count, but the essence of the situation
24 is that you must determine each count
25 independently, and as to each where

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1 Mr. Banks is saying as to each "I was
2 entrapped", then you have to determine
3 whether he was entrapped as to that
4 particular count which again gets back
5 to whether the inducement was the
6 factor or whether he was ready and
7 willing to do that particular deal.

8 THE FOREMAN: On each count?

9 THE COURT: On each count. Does that answer
10 your question?

11 You can sort of consult quietly
12 if you want to.

13 THE FOREMAN: All right. If he was found
14 guilty or innocent of the first count,
15 either way, would that - that could
16 have a bearing on the other three
17 counts?

18 THE COURT: Well, the facts that underly your
19 determination of guilt or innocence
20 on the first count can have some rela-
21 tionship to that same determination
22 as to any of the other counts. In
23 other words, you might find maybe from
24 looking at Mr. Banks on the stand you
25 may decide, well, he obviously was

1 ready and willing to do it, you know,
2 you can gather something from credibility,
3 and so forth, or you might say in looking
4 at him and listening to him talk, why,
5 obviously he would not go into it, or
6 you can consider the character witnesses,
7 obviously he would not go into it.
8 Now, that type of fact, and this is
9 just an example, could lard through
10 your considerations as to each of the
11 four counts, you can take that general
12 consideration and apply it to each one.
13 It may have a different affect as to
14 each one. Other facts may have the
15 same determination. But in the bottom
16 line you have got to determine as to
17 each count whether each of the four
18 elements I gave you was present including
19 the fifth element, the proof that there
20 was no entrapment.

21 THE FOREMAN:

Let me put it another way now.

22 THE COURT:

All right.

23 THE FOREMAN:

24 If we found that he was entrapped
25 on the first count, now, that would not
automatically exonerate him on the other

1 three, they still would have to be
2 judged separately? That's where our
3 concern is.

4 THE COURT:

5 They would still have to be
6 judged separately, that is right.
7 Obviously if you had reached a determina-
8 tion that he was entrapped on the first
9 one, leaving it to you to decide, but
10 that would be a strong factor in my
11 determination. Now, again, this is -
12 my comment is just for me and it is
13 up to you to determine but as to the
14 events of March 7, for example, if
15 you - well, let me back up a little
16 bit. It may not be that strong and,
17 again, it is up to all of you to say
18 whether it has any weight or what
19 weight it has, but a finding that he
20 was not ready and willing to participate
21 prior to February 25 might not necessari-
22 ly foreclose your finding that he was
23 ready and willing to act for the 28th
24 or the 7th or the 11th, but you would
25 put into that consideration whether
the readiness and willingness that

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1 you might find before event num
2 two, three and four came about because
3 of his being enticed into the first
4 event. You have got to make it as to
5 each count, each crime, but you take
6 all of the evidence you have got in the
7 case and bring it to bear, bring it
8 to focus upon the events you are
9 talking about, finding out as to that
10 event whether prior to the Government
11 coming into the picture as to that
12 event he was ready and willing to
13 participate if he had the opportunity.

14 THE FOREMAN:

Thank you, sir.

15 THE COURT:

All right.

16
17 (At 3:56 p.m., the Jury again
18 retired to continue their deliberations.)

19 MR. HILL:

Your Honor, may I be heard?

20 THE COURT:

Yes, Mr. Hill.

21 MR. HILL:

22 Your Honor, just for the record,
23 I would again except to the instructions
24 that you just gave the Jury on the
25 ground that it again suggests that they

1 can consider each of the later time,
2 after the 25th, as a separate
3 transaction. Again, with that circum-
4 stance it would be requested in the
5 instruction that if they find entrap-
6 ment as to the 25th that they should
7 find continuing entrapment as a matter
8 of law as to the other three transac-
9 tions.

10 THE COURT:

Well, it does not follow the
11 matter of law, Mr. Hill, and it seems
12 to me to fly a big in the fact of the
13 exception you took after my basic
14 charge that I did not sufficiently
15 separate the four transactions to the
16 Jury. I think they have to be dealt
17 with separately even though the factual
18 considerations can interrelate. You
19 have an exception.

20 Mr. Wagner?

21 MR. WAGNER:

Nothing else, your Honor.

22 THE COURT:

All right.

23 * * * * *

24
25
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1 PROCEEDINGS: September 20, 1977, 6:02 p.m.

2 APPEARANCES: As before noted.

3

4 (A note was received from the
5 Jury.)

6

7 (Defendant present.)

8

9 (Jury present.)

10

11 THE COURT: I have received a note from
12 you indicating that the Jury has
13 reached its verdict, is that
14 correct?

15 THE FOREMAN: Yes, sir.

16 THE COURT: Are you prepared to say as to
17 each count whether the Defendant is
18 guilty or not guilty if I ask you
19 as to each one?

20 THE FOREMAN: Yes, sir.

21 THE COURT: All right. How do you find as
22 to Count I?

23 THE FOREMAN: Count I the Jury finds the
24 Defendant innocent.

25 THE COURT: And as to Count II?

THE FOREMAN: Guilty.

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1 THE COURT: And as to Count III?

2 THE FOREMAN: Guilty.

3 THE COURT: And as to County IV?

4 THE FOREMAN: Guilty.

5 THE COURT: Do you want the Jury polled at
6 all, Mr. Hill?

7 MR. HILL: Yes, your Honor, please.

8 THE CLERK: If your verdict is as the Court
9 has recorded it please answer by saying
10 yes; if your verdict is not as the
11 Court has recorded it please answer by
12 saying no.

13
14 (Each juror, upon being asked
15 by the Clerk answered in the affirmative.)

16
17 THE COURT: We thank you for your work on
18 the case. You are excused at this
19 time.

20 Are some of the jurors, Mr. Walsh,
21 who are finished their service?

22 THE CLERK: No, your Honor.

23 THE COURT: We will let you know when we next
24 need to have you come in. You are
25 excused at this time with our thanks

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WESTERN DISTRICT OF NEW YORK

APPELLANT'S MOTION FOR ACQUITTAL
NOTWITHSTANDING THE VERDICT

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1 PROCEEDINGS: September 26, 1977, P.M.

2 APPEARANCES: As before noted.

3
4 THE CLERK: Criminal Case 77, Case Number 50,
5 United States versus Glenn Banks.

6 THE COURT: Mr. Hill.

7 MR. HILL: Your Honor, at this time the
8 Defendant moves for acquittal on
9 the Second, Third and Fourth Counts
10 of the indictment notwithstanding
11 the verdict. The grounds for my
12 motion, your Honor, is that the evi-
13 dence is insufficient to sustain a
14 conviction on those counts. Entrapment
15 as of February 25th 1977 in connection
16 with the first count of the indictment
17 was established, better than being
18 established as a matter of law it was
19 established in the verdict of the jury
20 also. When the jury acquitted Mr.
21 Banks of that first count I think the
22 only rational basis in the record that
23 they could have acquitted on was
24 entrapment. I think the evidence in
25 the case shows, your Honor, that the

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WESTERN DISTRICT OF NEW YORK

1 entire series of transactions, the
2 second, third and fourth sales alleged
3 in the indictment were really part
4 of a unified plan by the Government's
5 Agent to go out and find purchasers
6 of food stamps and then to arrest
7 and indict those whom they sold to.
8 In other words, all four sales were
9 the product of the Government's
10 overall plan and their initial inducement
11 of Mr. Banks in the first instance.
12 I think what the uncontroverted
13 testimony showed is that the Government
14 simply used the first sale as a
15 stepping stone to the other three.
16 I think that the controlling legal
17 principal in this regard is found
18 in Sherman versus the United States
19 which is at 356 U.S. Reports 369,
20 and the operative language at page
21 374 of that opinion the Supreme
22 Court said it made no difference
23 that the sales for which petitioner
24 was convicted occurred after a series
25 of sales. They were not independent

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WESTERN DISTRICT OF NEW YORK

1 acts subsequent to the inducement but
2 part of course of conduct which was
3 the product of the inducement. Your
4 Honor, I submit that that is exactly
5 what we have in this case. Rather
6 than independent acts we have a unified
7 course of conduct on the part of
8 Deputy Petronella and the agents of
9 the Erie County Sheriffs Department
10 and the agents of the Government, and
11 for that reason the jury having found
12 entrapment in the first instance I
13 submit that the evidence was insufficient
14 to sustain a conviction with respect
15 to the other three counts in the
16 indictment.

17 THE COURT:

Mr. Wagner.

18 MR. WAGNER:

19 Your Honor, I would only respond
20 briefly by saying that I believe it's
21 the jury's right to consider the facts
22 separately in all four counts and they
23 did that quite obviously by rendering
24 a verdict different on Count I than
25 the remaining counts, and I believe
the Court's instructions were proper

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WESTERN DISTRICT OF NEW YORK

1 on that and that they properly did
2 conclude that there may not be a
3 sufficient basis to convince them
4 beyond a reasonable doubt on Count I
5 but they obviously found that they
6 had been convinced beyond a reasonable
7 doubt for the remaining counts and I
8 would submit that the evidence was
9 sufficient to justify that, I would
10 oppose the motion.

11 THE COURT:

12 Now, there is, of course, in this
13 defense, so called, of entrapment as
14 I instructed the jury that when the
15 circumstances of the case as it
16 developed showed to me that there is
17 some possibility of entrapment that
18 then I load onto the Government's
19 shoulders along with its normal burden
20 of proof the burden of proving beyond
21 a reasonable doubt that there was not
22 entrapment and this, of course, as you
23 have said must be found and determined
24 by the jury as to each of the four
25 counts. Now, as I told the jury there
are two aspects to that, one that the

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WESTERN DISTRICT OF NEW YORK

1 Government can show beyond a reasonable
2 doubt that the Defendant was ready
3 and willing and predisposed to commit
4 this particular crime and needed only
5 the opportunity afforded to him by the
6 Government Agents in order to bring
7 into fruition. Now, if you consider
8 that facet of the Government's burden,
9 if the jury had determined that Mr.
10 Banks was not ready and willing prior
11 to February 25, which was the day of
12 the first event, do you agree that
13 that necessarily would - that same
14 finding would carry over into the other
15 events and you could not by going
16 into events two, three and four take
17 advantage of event number one to
18 convert someone who was unready and
19 unwilling into somebody who was ready
20 and willing?

21 MR. WAGNER:

Well, I think that the verdict
22 is that they were not convinced beyond
23 a reasonable doubt that on Count I
24 that the Defendant was ready and willing.
25 I think that's clear from the question

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1 they put to the Court in their
2 deliberation and also from the verdict.
3 That is not to say that they found,
4 however, that he was entrapped on
5 Count I necessarily. Simply that they
6 found that they were not convinced
7 beyond a reasonable doubt and I would
8 speculate that they did in fact grant
9 the Defendant the benefit of any
10 doubts they had on Count I but they
11 clearly found what that instruction
12 to them that he was clearly guilty
13 of the remaining counts. I do not
14 think it is the law that if a Defendant
15 is acquitted on the first count of a
16 series of transactions where entrap-
17 ment is a defense that necessarily
18 the remaining counts must fall.

19 THE COURT:

20 You are going to a broader
21 question than I posed to you, because
22 the other part of the Government's
23 burden to answer the so called defense
24 of entrapment by showing either of
25 these to be true, namely that the
Defendant was ready and willing prior

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WESTERN DISTRICT OF NEW YORK

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1 to the alleged event to commit the
2 act having an opportunity tendered
3 to him and the other method of getting
4 over or around the defense of entrap-
5 ment would be for the Government to
6 show beyond a reasonable doubt that
7 the man was not induced, that induce-
8 ment had nothing to do with the
9 committing of the crime. Now, you're
10 larding both of those together. In
11 my mind they are quite separate. My
12 single question related to the showing
13 of readiness and willingness.
14 Obviously the Government failed on
15 both sides of that burden as to
16 Count I because the only question
17 really put to the jury was was there
18 entrapment, so the Government failed
19 to show that he was ready or willing
20 or that he - or that inducement
21 was no part of it. We don't know
22 which way the jury went on that.
23 So if their decision as to no entrap-
24 ment as to the first Count was premised
25 on his not having been shown beyond a

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WESTERN DISTRICT OF NEW YORK

1 reasonable doubt to have been ready
2 and willing my only question is is
3 not the Defendant entitled as a matter
4 of law to have that finding carry into
5 events two, three and four and to
6 bar the Government from taking advan-
7 tage of event number one to show
8 readiness and willingness as to event
9 two or three or four, leaving aside
10 the inducement.

11 MR. WAGNER:

Well, my answer to that would be
12 I would suggest and argue that it is
13 not the Defendant's right to have that
14 finding, that implicit finding carry
15 over to the remaining counts, that
16 they, the jury, has the right to
17 consider the second count separately
18 and I believe --

19 THE COURT:

Now, the reverse, of course, would
20 be true if the jury had found Mr.
21 Banks to have been prior to February
22 25, 1977 ready and willing to commit
23 this crime having the opportunity,
24 then that of necessity would carry
25 through events two, three and four.

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1 MR. WAGNER:

2 Well, I would suggest, Judge,
3 that it would of necessity - of
4 necessity from our standpoint logically
5 looking at it I would think a jury
6 would still be entitled to pick and
7 choose which counts to convict and
8 which counts to acquit on and while
9 it might fly in the fact of our
10 logic as well as the Judge's, if they
11 chose to find that the man had been
12 ready and willing for the first
13 transaction but for some reason in
14 their minds they were not convinced
15 beyond every doubt, every reasonable
16 doubt, on some remaining count they
17 could acquit him also and that would
18 be their right to do. Certainly Mr.
19 Hill would not concede or no Defendant
20 would concede that Count I was determina-
21 tive of all the counts. Especially
22 if he was convicted of Count I they
23 wouldn't throw in the towel for the
24 remaining three, they would still
25 argue that he should be acquitted on
that. Who could dispute the Defendant's

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WESTERN DISTRICT OF NEW YORK

1 right to argue that each count should
2 be considered separately if it's going
3 bad for him in the first few rounds,
4 so to speak.

5 THE COURT:

There was no question in the case
6 but what the jury was told flatly that
7 each count was to be considered
8 separately.

9 MR. WAGNER:

Without a question that was made
10 clear to them and I think they simply
11 did that, they considered that instruc-
12 tion. They quite obviously did
13 because they found different verdicts
14 on different counts. And I do not
15 see how that right of a jury should
16 be eliminated now by the Court.
17 Based on the evidence we had in the
18 case I feel they properly had the
19 right to conclude that later on.
20 The facts were different in the
21 remaining counts, the amounts were
22 different, circumstances were different,
23 there had been a lapse of time, and
24 I believe that, of course, the jury
25 could have found the Defendant's

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readiness and willingness changed
as time went on. I think they were
also aware of the fact through Mr.
Hill's arguments and through your
instructions they should consider
the first few counts perhaps heavily
in determining that later one and
they obviously did that so I would
again oppose the motion to dismiss
for acquittal.

THE COURT: Anything further, Mr. Hill?

MR. HILL: No, your Honor.

THE COURT: The other side of that question
concerns Defendant more, that is,
of course, the Government could
obviate this defense of entrapment
by leaving readiness and willingness
out of the picture by showing there
had not been any inducement or that
inducement did not enter at all into
the criminality. When you look at
that facet of the alternate test or
the alternate burden the Government
has it seems to me that the jury
well could have found particularly

1 when they considered the absence of
2 the witness Gray who was said to have
3 come into the hardware store prior to
4 the time Mr. Petronella came in and
5 we have no knowledge as to what was
6 said between Mr. Gray and Mr. Banks,
7 the jury facing that vacuum might
8 well have felt that Mr. Wagner did
9 not carry his burden of showing that
10 inducement was no part of that first
11 transaction and yet while there was
12 testimony about some intermediate
13 visit by Gray to the hardware store
14 between February 25 and February 28
15 the jury could have believed that
16 or not, and if they believed it did
17 not happen or believed that nothing
18 happened in that visit of any consequence
19 even though they would have found that
20 the Government had not shown beyond a
21 reasonable doubt that inducement was
22 not part of the first they well could
23 have found from what they knew of two,
24 three and four that - or rather the
25 other way around, they could have found

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WESTERN DISTRICT OF NEW YORK

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that inducement was part of event number one and yet they could have found that two, three and four that inducement was not again leaving readiness and willingness out in the parking lot. Of course, if the Government did show beyond a reasonable doubt to the satisfaction of the jury that inducement was not any part of two, three and four then the defense is out the window.

MR. HILL:

Once again, your Honor, I think the key is whether or not there was inducement in the first instance.

THE COURT:

You would argue then that if there was inducement into event number one that that necessarily cuts through and applies to the other three.

MR. HILL:

In the circumstances of this case, your Honor, because really I think you have four interrelated transactions here. It's not like one took place on February 25th and then some time some weeks later another one took place, you know, in a vacuum so to speak.

1 Between and connecting the four
2 events there is a continuous course
3 of conduct. Deputy Petronella is in
4 all of them. Gray is in the first
5 two at least.

6 THE COURT:

Well, he is in the car in the
7 second event.

8 MR. HILL:

9 Yes. To that limited extent,
10 at least he is present. But the point
11 is after the first transaction Deputy
12 Petronella says, "When do you want
13 more?", that sets up the second
14 one. If you look at it in just that
15 limited affect, that limited scope
16 rather, Petronella is there, "When
17 do you want more?", that leads to the
18 second one. Then even in Deputy
19 Petronella's testimony there's evidence
20 of him contacting Mr. Banks, he
21 initiating the telephone call. These
22 things are all related and that's what
23 the problem is as I see it, your
24 Honor. Since they're all related in
25 that respect I think that entrapment
in the first instance no matter which

1 end you approach it from, whether
2 you approach it from the aspect of
3 predisposition or of inducement,
4 there being entrapment found in the
5 first instance it has to relate to
6 all of them, all four.

7 THE COURT:

All right. Now, I have not set
8 a date for sentencing and, of course,
9 I will dispose of this motion prior
10 to doing so. Has there been any
11 investigation by the Probation
12 Department?

13 MR. HILL:

Not yet, your Honor.

14 THE COURT:

No one was here at that time.
15 We will deal with that on the same
16 basis. If I decide the motion against
17 Defendant then we will set up the
18 time for sentencing and the launching
19 of the investigation.

20 Thank you.

21 MR. HILL:

Thank you.

22
23 * * * * *
24
25

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,

-vs.-

GLENN BANKS,

Defendant.

Cr. 77-50

MEMORANDUM

and

ORDER

Defendant was charged with four violations of 7 U.S.C. §2023(b). The jury found the defendant not guilty as to Count I and guilty as to Counts II through IV. Defendant moves for acquittal pursuant to rule 29 of the Federal Rules of Criminal Procedure.

Counsel for defendant argues that the jury's verdicts as to Counts II through IV are inconsistent with its verdict as to Count I. Defendant admitted purchasing the food stamps, but claimed that he had been entrapped by the Government's agents. The defense argues that the jury's verdict on Count I necessarily included a finding of entrapment. Counsel contends that having found entrapment in Count I, the jury was bound to acquit the defendant in Counts II through IV on that basis, because the jury must have determined that the defendant was not ready and willing to commit the crime when approached by the Government's agents on February 25, 1977 in order to reach its verdict in Count I.

This argument ignores the law governing the defense of entrapment. The defense presents two factual questions to be resolved by the jury. They are:

1. Did the Government agent induce the defendant to commit the crime charged in the indictment? and
2. Was the accused ready and willing to commit the act if given the opportunity?

United States v. Martinez-Carcano, No. 77-1041 (2d Cir. June 21, 1977); United States v. Swiderski, 539 F.2d 854 (2d Cir. 1976); United States v. Licursi, 525 F.2d 1164 (2d Cir. 1975).

Once some evidence of the Government's initiation of the criminal transaction has come into evidence in the case, the Government must prove beyond a reasonable doubt either that the Government did not directly or indirectly induce the defendant to enter into the criminal transaction or that the defendant prior thereto had a propensity to commit the act. The jurors were instructed that, if they found beyond a reasonable doubt that defendant had not been induced or if they found beyond a reasonable doubt that defendant was predisposed to commit the criminal act, they could not find entrapment.¹

Defendant's argument also ignores the jury's duty to consider each count in a multiple count indictment separately, which means that the issue of entrapment must be resolved separately as to each count. The jury was however told that there was a factual relationship among the four transactions and that, if they found that the Government had failed to

¹ Whatever error was committed by me in this regard favored the defendant.

prove beyond a reasonable doubt that there was no entrapment on February 25, 1977, they could impute such failure to the later transactions. The jury's verdict shows that they chose not to make that imputation. It is highly and permissibly probable that the jury's verdicts in Counts II through IV rested upon its finding that there was no inducement on the part of the Government with respect to the transactions occurring on February 28, March 7 and March 11 or that prior to each date defendant was predisposed to commit the crime. Seemingly inconsistent verdicts are often caused by compassion or compromise on the part of the jury and not by the jury's belief in the defendant's innocence. United States v. Greene, 497 F.2d 1068, 1085-6 (7th Cir. 1974); United States v. Carbone, 378 F.2d 420 (2d Cir. 1967).

The jury's verdict in Counts II through IV is supported by the evidence.

It is therefore hereby

ORDERED that defendant's motion for acquittal is denied and it is further

ORDERED that defendant appear for sentencing on November 7, 1977 at 2:00 p.m.

Dated: Buffalo, N.Y.
October 25, 1977

~~s/John T. Elfyin~~
U.S.D.J.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

GLENN BANKS

Defendant

MOTION FOR THE SUPPRESSION
OF EVIDENCE AND FOR THE
RETURN OF SEIZED PROPERTY

NC. CR-77-50

TO: HON. RICHARD J. ARCARA
United States Attorney
EDWARD J. WAGNER, ESQ., OF COUNSEL
United States Courthouse
Niagara Square
Buffalo, New York 14202

The defendant hereby moves this Court to suppress as evidence against him in any criminal proceeding the hereinafter described property which was unlawfully seized from him in violation of his rights under the Fourth, Fifth and Ninth Amendments to the United States Constitution, by agents of the Sheriff's Department of Erie County, New York and of the United States of America, as more fully shown by the annexed affidavit of SEAN D. M. HILL. The property subject to this motion is:

- (1) Three Hundred and 00/100 (\$300.00) Dollars in United States currency seized on February 25, 1977.
- (2) Nine Hundred and 00/100 (\$900.00) Dollars in United States currency seized on February 29, 1977.

(3) Four (4) Panasonic black and white television sets seized on March 7, 1977.

(4) Nine Thousand and 00/100 (\$9,000.00) Dollars in United States currency seized on March 11, 1977.

(5) Tape recordings of conversations involving the defendant and one JOSEPH PATRONELLA, made on each of the aforementioned four dates.

(6) All of the other fruits of the aforementioned unlawful invasion of the defendant's rights under the Fourth, Fifth and Ninth Amendments to the United States Constitution.

The defendant further moves that the Nine Thousand and 00/100 (\$9,000.00) Dollars in United States currency referred to hereinabove be returned to him.

Dated: Buffalo, New York
August 2, 1977



SEAN D. M. HILL
Attorney for Defendant
Office & P.O. Address
361 Franklin Street
Buffalo, New York 14202
(716) 882-2300

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

GLENN BANKS

Defendant

AFFIDAVIT IN SUPPORT OF MOTION
FOR THE SUPPRESSION OF EVIDENCE
AND FOR THE RETURN OF SEIZED
PROPERTY

NO. CR-77-50

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

SEAN D. M. HILL, being duly sworn, deposes and says:

FIRST: That he is an attorney at law duly licensed to practice his profession in the State of New York, is a member of the Bar of the United States District Court for the Western District of New York and is the attorney for the defendant, GLENN BANKS.

SECOND: That the defendant was indicted by the March, 1976 session of the Grand Jury empaneled in the United States District Court for the Western District of New York on June 8, 1976 for four violations of Title 7, United States Code, §2023 (b), knowingly acquiring and possessing Food Stamp Coupons having a value in excess of \$100.00 in a manner not authorized by Chapter 51 of Title 7 of the United States Code or the regulations issued pursuant thereto.

THIRD: That, upon information and belief, this indict-

ment is the result of an "investigation" initiated and conducted jointly by the United States Attorney, the Erie County Sheriff's Department, the United States Department of Agriculture, the United States Marshall's Office and the Erie County District Attorney's Office into the alleged "black market sale" of food stamps in the aftermath of the "Blizzard of '77".

FOURTH: That, upon information and belief, based upon nothing more than unsubstantiated reports in the local news media, the aforementioned governmental agencies initiated a plan to ferret out participants in the alleged "black market" operation. The following was attributed to RICHARD J. ARCARA, the United States Attorney for the Western District of New York, in explanation of the basis for the investigation which led to this indictment:

"Arcara said that the investigation had been prompted in part by Courier Express stories dealing with alleged widespread food stamp abuse in Western, New York following President Carter's declaration of the region as a major disaster area last month.

* * *

Arcara said that after the news media reported that widespread abuse of the food stamp program was going on, his office in conjunction with other authorities mobilized an investigation team." Buffalo Courier Express, March 12, 1977, page 1.

FIFTH: That, upon information and belief, the "investigation team" included a team of undercover personnel whose members

included, among others, deputies of the Erie County Sheriff's Department, including one JOSEPH PETRONELLA and one SANTO CONSTANTINO, and two paid "special employees", who were paid police informants and who had considerable prior police contact in the context of arrests and convictions for their own criminal activities, named JAMES RILEY and ROBERT GREY; both of whom were completely unreliable and untrustworthy individuals.

SIXTH: That, upon information and belief, part of the foregoing governmental plan included sending either RILEY or GREY, or both, into Buffalo's east side, predominantly black community, to make random wholesale intrusions, without regard for constitutional restraints, upon persons living and working there, and to attempt to induce those persons to purchase food stamps which had been issued by the United States Department of Agriculture especially to implement the governmental plan, with the intention to then formally charge, arrest and indict the purchasers so obtained.

SEVENTH: That, upon information and belief, the defendant was one of the persons intruded upon by RILEY or GREY (hereafter referred to as the "special employee").

EIGHTH: That, upon information and belief, on February 25, 1977 the government's "special employee" approached and intruded upon the defendant in his place of business without any legitimate business purpose and without probable cause or any other constitutionally

permissible basis for invading upon the defendant or in any way interfering with his privacy or his right to be free from unreasonable searches and seizures and in a constitutionally unreasonable manner. At that time the "special employee", after initially being refused by the defendant, induced the defendant to purchase the food stamps as alleged in the first count of the indictment.

NINTH: That, upon information and belief, by exploiting the aforementioned unlawful initial intrusion upon the defendant, the government was able to induce the defendant to purchase food stamps on four separate occasions as alleged in the indictment and in connection therewith obtained United States currency and television sets, as alleged in the indictment, which the government intends to offer into evidence upon the trial of the indictment.

TENTH: That Deputy PETRONELLA, in his dealings with the defendant, was outfitted with a transmitting device by which his conversations with the defendant were transmitted and recorded at another location, which recordings the government intends to offer into evidence upon the trial of the indictment.

ELEVENTH: That, upon information and belief, the government's claimed justification for the hereinabove described investigation is that it was aimed only at known sellers of stolen property who approached the government's undercover investigators to initiate illegal

purchases of food stamps. The following are attributed to the government's representatives relative to the foregoing:

"Most of their dealings were with whites and blacks on the east side, he said, because the team only went after known sellers of stolen property." (attributed to Erie County Sheriff's Department Sergeant Santo Constantino) Buffalo Evening News, March 12, 1977, page A-3.

"Arcara explained that the undercover deputy let it be known in various areas that he had food stamps available, and that the men then approached the deputy to make their deals." (attributed to Richard J. Arcara, United States Attorney for the Western District of New York) Buffalo Courier Express, March 12, 1977, page 1.

TWELFTH: That, upon information and belief, prior to February 25, 1977, the defendant never engaged in any criminal enterprise involving the sale of stolen property or otherwise, nor had the government any reasonable basis to believe he would do so, nor would he have done so on that occasion and the subsequent occasions alleged in the indictment but for inducement by the government's undercover agents upon their uninvited approach to him. That in the defendant's case the government's intrusion upon him was nothing more than a random groundless invasion of his constitutional rights under the Fourth, Fifth and Ninth Amendments to the Constitution of the United States in which he was induced into criminality as the result of transactions initiated by the government.

THIRTEENTH: That neither the initial governmental invasion upon the defendant, nor any of the subsequent governmental approaches to him was authorized by any lawfully issued warrant.

FOURTEENTH: That, upon information and belief, immediately upon the consummation of the transaction alleged in Count IV of the indictment, the defendant was arrested and the food stamps confiscated by the government's agents. Consequently, the government presently has both the stamps which were sold on that occasion and the money paid for them.

FIFTEENTH: That the sources of all matters herein alleged upon information and belief are conversations with the defendant, statements of other witnesses, information supplied by the United States Attorney's Office and reports appearing in the news media.

SIXTEENTH: That no previous application has been made to this or any other court for the relief herein prayed for.

WHEREFORE, the defendant prays that the relief set forth in the annexed notice of motion be granted, together with such other and further relief as to the Court may seem just and proper.

s/

SEAN D. M. HILL

Sworn to before me this

2nd day of August, 1977

s/

JUDITH E. LA PRELL
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

GLENN BANKS

Defendant

SUPPLEMENTAL AFFIDAVIT IN SUPPORT
OF MOTION FOR THE SUPPRESSION OF
EVIDENCE AND FOR THE RETURN OF
SEIZED PROPERTY

NO. CR-77-50

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

SEAN D. M. HILL, being duly sworn, deposes and says:

FIRST: That he makes this supplemental affidavit in support of the defendant's motion for suppression of evidence and the return of seized property heretofore filed in this action on August 3, 1977.

SECOND: That subsequent to filing the motion he went to the United States Attorney's Office to discuss other matters related to this case and, co-incidentally, ROBERT GREY, the person identified by the United States Attorney as the government's "special employee" in this case, was present in the office.

THIRD: That upon the invitation of EDWARD WAGNER, Assistant United States Attorney, he was able to interview Mr. Grey in private.

FOURTH: That at the outset of the conversation, Mr. Grey appeared uncertain as to exactly which defendant that he had dealt with was GLENN BANKS. Upon being reminded that he was the man in the Harris Hardware Store, Mr. Grey indicated that he remembered him.

FIFTH: That when he asked Mr. Grey why he approached Mr. Banks to offer to sell him food stamps, Mr. Grey indicated that it was because he had "dealt with" Mr. Banks in the past. When asked for the specific nature of their past dealings, Mr. Grey was unable to give any. Deponent does not know the reason for his inability to do so. He has been informed by Mr. Banks that Mr. Banks does not know ROBERT GREY, that he never had dealings of a criminal nature with anyone, and that the only possible context in which Mr. Grey could have dealt with him would have been as a legitimate customer in his store.

SIXTH: That when asked about the conversation that he had with Mr. Banks, Mr. Grey stated that he told Mr. Banks that he had a white man outside with some food stamps to sell and that Mr. Banks "agreed" to purchase the stamps. When asked for more details of the conversation, including the details of Mr. Banks' "agreement", Mr. Grey was unable to provide any. Once again, deponent does not know if Mr. Grey's inability was based upon an unwillingness to give the details or because the details are inconsistent with Mr. Grey's original statement and consistent with Mr. Banks' position that he purchased the stamps

only after being induced to do so by Mr. Grey.

SEVENTH: That although he wished to question Mr. Grey concerning other matters after Mr. Grey had discussed the foregoing matters, he refrained from doing so when Mr. Grey suddenly appeared to become quite nervous and indicated that he was unhappy with his entire involvement in the food stamp situation, that he was, as he characterized himself, a "criminal" who was in jeopardy of being put in jail, and that he felt threatened by the fact that his home had been vandalized although he did not know who was responsible for the acts of vandalism.

EIGHTH: That he respectfully submits that the only way to determine in an orderly fashion whether or not the government, through its "special employee" and agents, had any constitutionally cognizable basis for invading the defendant's rights under the Fourth, Fifth and Ninth Amendments to the United States Constitution is to conduct an evidentiary hearing upon the instant motion at which the government can be directed to produce Mr. Grey to testify. He respectfully submits that there are issues involved herein that cannot be properly placed before a jury in the context of a trial, but that should be resolved by the Court prior to exposing the defendant to a trial.

s/

SEAN D. M. HILL

Sworn to before me this

5th day of August, 1977

s/

DECISION ON SUPPRESSION MOTION

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1 PROCEEDINGS: August 8, 1977.

2 APPEARANCES: As before noted.

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(Defendant present.)

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(Excerpt.)

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THE COURT:

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MR. HILL:

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THE COURT:

I saw that this morning, yes.

MR. HILL:

There's one correction. I noticed
a typographical error in it last night

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 PROCEEDINGS: August 8, 1977.
2 APPEARANCES: As before noted.
3
4 (Defendant present.)
5
6 (Excerpt from proceedings.)
7
8 MR. HILL: Your Honor, I would like to add
9 one thing for the record. I filed a
10 supplemental affidavit which I think
11 the Court has seen, I assume the Court
12 has seen it.
13 THE COURT: I saw that this morning, yes.
14 MR. HILL: There is one correction. I noticed
15 a typographical error in it last night
16 and if we could just correct it on
17 the record.
18 THE COURT: Where is it?
19 MR. HILL: It would be in the supplemental
20 affidavit.
21 THE COURT: What paragraph?
22 MR. HILL: Paragraph numbered 6.
23 THE COURT: Yes. What line?
24 MR. HILL: The last line, the second word,
25 rather than reading and inconsistent

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it should read and consistent.

THE COURT: Not the last line of the paragraph
but the last line --

MR. HILL: The last line on the page where
it starts.

THE COURT: And it should read what?

MR. HILL: And consistent.

THE COURT: And consistent. Just strike off
"in".

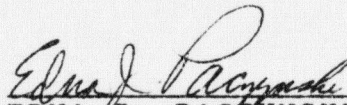
MR. HILL: That's right.

THE COURT: I have made that correction.

(Conclusion of excerpt of
proceedings.)

* * * * *

I certify that the foregoing is a
complete and accurate transcription
of my stenotype notes taken herein.



EDNA J. PACZYNSKI, Official Reporter
USDC, WDNY.



Tape I
Feb. 25. 1977

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Joseph Petronella: I'm in front of Harris's Hardware.
H-A-R-R-I-S, license plate number of
his truck is 3126 G like in George. U like
in Union. The other plate number of the
truck is 8661 G.T. Spelling of the name
is H-A-R-R-I-S.

Glenn Banks: You know man well I talk but I talk to my
man, ya see.

Banks: (Unintelligible) You know if you want to do it
like this.

Voice: No no man, you ain't got to (unintelligible)
on me.

Petronella: Yea, well (unintelligible) don't dig.

Voice: It's alright. You can come over this way. Man
you can go up there and talk to him.

Petronella: Who?

Robert Gray: (Unintelligible), he wanted, he wanted the whole
three. the grand for three hundred.

Petronella: Yea.

Gray: Yea.

Petronella: Hay, I don't dig doin it in here.

Banks: Why ain't nobody in here.

Petronella: I don't want to bring em all in like that.

Voice: (Unintelligible).

Banks: Ain't nobody gonna take nothin' from ya.

Petronella: You sure?

Voice: Oh yea (unintelligible) gonna take nothin from
him, ain't nobody gonna take.

Petronella: Huh?

Voice: Ain't nobody gonna take nothin' from you.

Petronella: Where's the bread?

Gray: Ain't gotta worry bout it Joe. What's wrong with you.

Banks: There's the money right there.

Petronella: Alright.

Banks: Be cool.

Petronella: I mean there's people just wanna get jammed.

Banks: Yea come (unintelligible).

Petronella: No no no no no no no no no.

Banks: Look.

Petronella: Ha.

Banks: Ain't nobody back here.

Voice: Ain't nobody gonna do nothin' to ya man.

Voice: Seen somebody come in.

Petronella: 'Wow. you know.

Banks: Fact. they can. you can stay out there if they want to.

Petronella: Alright.

Banks: Ok. That's what he told me a thousand, right?

Petronella: There's a here's a thousand dollars. Check'en if you want.

Banks: "Booket" get. get back over there.

Petronella: Here. want'ta check some? One. two three. four. five six, seven eight, nine. ten. That's four hundred, right? Those are seven's and deuces. ok? One, two, three. four. five, six, seven eight. nine. ten. That's four hundred and there's sevens and deuces. there's a thousand. That's a pretty ring, where'd you get that?

Miles: Come in here Glenn.

Banks: It, well, wait a minute.

Petronella: That's a pretty ring.

Banks: Oh ah these this ring? Oh yea this travelin' ring. Ah...

Petronella: Eighty, that's a hundred. Eighty, ninety, two hundred.

Voice: (Unintelligible).

Banks: Miles.

Miles: Yea.

Banks: Look in my thing and bring me ah...

Banks: Here (unintelligible) hold that man, I'll be right back.

Petronella: Your ain't puttin' me through changes?

Banks: Oh, no I'm I'm I'm going into the...

Miles: How much these books (unintelligible).

Petronella: There's a thousand dollars there. Is he gonna be able to get rid of 'em all?

Miles? Huh?

Petronella: It's a thousand. Those are forty dollar books.

Voice: (Unintelligible).

Banks: Hay'um.

Petronella: Huh?

Banks: (Unintelligible). These books ain't got nothin in' em.

Petronella: Oh yea. That's

Banks: (Unintelligible).

Petronella: That's all, that's all that is is two dollars. Count'em up, count' em up. Man, you make me nervous all these changes I get nervous.

Banks: Ha ha. You can't even...

Petronella: Huh?

Miles: (Unintelligible) some are seven dollars, some are two dollars

Petronella: Yea. yea that's right.

Banks: I know but'a, but the forties there.

Petronella: The forties are there.

Banks: That's fifty.

Petronella: There's fifty.

Voice: (Unintelligible).

Banks: All you have ta do ta hold'em in your hand (unintelligible) put'em in your pocket. For what do ya have to...

Petronella: Well I wanted to make sure everything was straight

Banks: No, I was talkin' about...

Petronella: Oh.

Banks: Ah, Miles that's it right.

Petronella: When do'ya want me?

Banks: Huh?

Petronella: When do'ya want'ta see me?

Banks: For more?

Petronella: Well I don't know. when when will you sell these?
When do you want'em.

Banks: Ah, let me, let me see what happen first, um...

Petronella: Tomorrow?

Banks: No, tomorrow!...

Petronella: Monday. Monday that's it for me.

Banks: Monday? Alright. Check with me Monday then.

Petronella: What time?

Banks: 'Bout the same time.

Petronella: Alright. who do I ask for or just ah...

Banks: Well. you'll just see me here.

Petronella: Ok, what time?

Banks: I'll be here. Any, anytime in the evening time.
What, what time is it now?

Voice: Six, six o'clock.

Petronella: I wish I had your diamond ring. Why can't we
do somethin' for that?

Banks: No...

Petronella: Ah, your diamond pinky.

Banks: This is. this is special ring.

Petronella: Is it?

Banks: Yea. That ring means somethin'.

Petronella: Oh oh oh...

Banks: That's special.

Petronella: Oh, ha, ha, ha, ha, ha, alright, that means somethin'.

Banks: Yea I know.

Petronella: Oh alright, ok then.

Banks: Ok.

Petronella: Take care.

Banks: (Unintelligible).

Petronella: Ha, ha.

Petronella: Has upper front teeth missing on the side of his mouth. The time is 6:30 P.M. The deal is completed and the other individual that was in the room is an elderly individual, approximately in his 50's by the name of Miles. The person I just did business with was the owner of the establishment, approximately 35, 40 years old. Could be correct that, approximately 50 years old. The place was on the corner of East Ferry and Waverly Street in the City of Buffalo.

DEFENDANT'S REQUESTED INSTRUCTION NO. 6

ENTRAPMENT - APPLIED TO SERIES OF TRANSACTIONS

The indictment accuses the defendant of acquiring and possessing food stamps on four occasions between February 25, 1977 and March 11, 1977. Should you find that each of these acts was part of a course of conduct which was the product of the Government's initial inducement of the defendant, a separate inducement need not be shown for the later transactions in order for you to find entrapment with respect to them.

Authority: Sherman v. United States,
356 U.S. 369, 374 (1957).
United States v. Rosner,
485 F 2d 1213, 1223 (2d Cir.
1973)

DEFENDANT'S REQUESTED INSTRUCTION NO. 7

ENTRAPMENT - ALTERNATE THEORY

I further charge you that once inducement is proven, the entrapment defense probes not only the defendant's propensity or predisposition to commit the crime with which he is charged, but also, alternatively, the conduct of the Government in promoting the commission of the crime. Should you find that the conduct of the Government in that regard was unfair or unconscionable, you may also acquit the defendant. In this context your attention will be focused on the propriety of the Government's conduct and not on the predisposition or propensity of the defendant to commit the crime.

Authority: Hampton v. United States,
96 S. Ct. 1646 (1976)
United States v. Russell,
411 U.S. 423 (1973)
Riley v. United States,
363 F.2d 955, 958 (2d Cir.
1966)
United States v. Quomo,
479 F.2d 688, 691 (2d Cir.
1973)
United States v. Morrison,
348 F.2d 1003, 1004-1005
(2d Cir. 1965).

COURT'S RULINGS ON APPELLANT'S
WRITTEN REQUESTS TO CHARGE

453

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1 THE COURT: So all I have to deal with is
2 the supplement, is that correct?
3 MR. HILL: Well, there are two remaining
4 requests, I think, in those I think
5 I originally submitted, there are
6 three remaining requests.
7 THE COURT: Three. So 1 through 5 is now
8 covered in the supplemental request
9 which was received this morning and
10 that is you will find in the charge
11 in substance. The only change is you
12 have in the fifth line the word
13 initiation and you had leaned on that
14 rather heavily before and you find
15 them talking of inducement, but if
16 there's any evidence of inducement
17 then, of course, the Government has
18 the burden of showing beyond a reasonable
19 doubt either that the inducement was
20 no factor or that Mr. Banks was ready
21 and willing to participate in this
22 criminality given the opportunity.
23 [Six is in in substance. Seven
24 is not in because I find no evidence
25 of such. Eight is in in substance.]

Edna J. Paczynski

OFFICIAL REPORTER, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

